NO. 04-628

Supreme Court, U.S.
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In The
Supreme Court of the United States

ALLEN V. JAFFE,

Petitioner,

v.

LISA SPICKLER GOODWIN, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

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BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Respondents Lisa Spickler Goodwin, Esquire ("Goodwin"), John R. Walk, Esquire ("Walk"), and Hirschler Fleischer, P.C. ("Hirschler Fleischer"), collectively the "Hirschler Respondents", by counsel, respectfully submit that Petitioner Allen V. Jaffe's ("Jaffe") Petition for Writ of Certiorari should be denied, and that the Court should decline to review this case.[1]

OPINIONS BELOW

The July 15, 2004 *per curiam* Opinion of the United States Court of Appeals for the Fourth Circuit is set forth as Appendix A hereto, inasmuch as the opinion set forth in Jaffe's Appendix contains certain typographical error. The Fourth Circuit's July 30, 2004 Order denying Jaffe's untimely petition for rehearing en banc is set forth in Jaffe's Appendix and reprinted as Appendix B hereto. The Fourth Circuit's October 15, 2004 Order denying Jaffe's motion for reconsideration of the Court's July 30, 2004 Order is not set forth in Jaffe's Appendix, but is set forth as Appendix C hereto.

Likewise, the District Court's January 7, 2004 Order and Memorandum Opinion dismissing Jaffe's lawsuit are not set forth in his original Appendix, but is set forth in Jaffe's Supplemental Appendix and as Appendix D hereto. The District Court's November 7, 2003 Order denying Jaffe's motion for additional time to file responsive pleadings was not included in Jaffe's Appendix or Supplemental Appendix, but is set forth as Appendix E hereto.

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[1] The Hirschler Defendants previously filed Corporate Disclosure Statements in the Court of Appeals for the Fourth Circuit. The information contained in the Corporate Disclosure Statements remains accurate. As noted therein, there is no parent corporation or any publicly held company owning 10% or more interest in Hirschler Fleischer.

In addition to the opinions of the District Court and the Fourth Circuit in this action, there have been a number of orders and opinions in the previous six lawsuits brought by Jaffe arising out of the same underlying events. Pertinent orders and opinions from those actions are set forth in the Appendix attached hereto.

JURISDICTION

The District Court lacked subject matter jurisdiction to consider Jaffe's claims, for the reasons stated by the District Court and the Fourth Circuit Court of Appeals. This Court's jurisdiction to review (or decline to review) those decisions, upon Jaffe's Petition for Writ of Certiorari, is set forth in 28 U.S.C. § 1254(1).

STATEMENT OF THE UNDERLYING PROCEEDINGS AND THIS CASE

Because the District Court dismissed the lawsuit in the present case under the *Rooker-Feldman* doctrine, following Jaffe's unsuccessful attempts to raise the same claims in prior lawsuits, consideration of the Fourth Circuit's affirmance of the District Court's decision requires an appreciation of those underlying proceedings. Suffice it to say that Jaffe's Statement of the Case fails to address many critical facts concerning the underlying proceedings.[2]

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[2] As discussed in the next section, Jaffe's Statement of the Case also contains a number of affirmative misrepresentations of fact.

Indeed, before filing the instant case, Jaffe filed six (6) lawsuits in connection with his dissatisfaction with a hair removal treatment provided by Virginia PhotoTherapy, LLC.[3] All of those prior lawsuits were dismissed, and Jaffe's attempts to appeal some of those decisions were all unsuccessful. As noted below, this Court has denied Jaffe's petition for certiorari in one of those prior cases.

Jaffe's first suit against Virginia PhotoTherapy (CL01-1543) was filed in the Circuit Court of Henrico County, Virginia, on about September 13, 2001. In that suit, Jaffe alleged (in a single count) a variety of claims including breach of contract, breach of warranty, fraud and negligence. Virginia PhotoTherapy filed a demurrer to Jaffe's pleading.

While the demurrer to Jaffe's first lawsuit was pending, Jaffe filed two (2) additional suits against Virginia PhotoTherapy in the Henrico Circuit Court. The first was a Bill of Complaint, CH01-1438, in which he sought to enjoin Virginia PhotoTherapy from allegedly harming other customers. Virginia PhotoTherapy demurred to Jaffe's equity suit on the basis that Jaffe lacked standing to bring suit on behalf of other customers. By Order dated March 8, 2002, attached hereto as Appendix F, the Court dismissed Jaffe's equity suit for lack of standing.

Jaffe also filed a second Motion for Judgment, CL01-2094, in which he attempted to assert a malpractice claim. Virginia PhotoTherapy filed a Special Plea to the second

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[3] The gravamen of Jaffe's lawsuits was that the procedure performed on his back was unsuccessful, and that his hair grew back. In this regard, it might also be noted that Jaffe signed the following written acknowledgement before receiving the hair removal treatment: "I acknowledge that no guarantee or assurance has been given by anyone as to the results that may be obtained." A copy of the written acknowledgement was even attached as an exhibit to at least one of Jaffe's motions for judgment in the underlying cases.

Motion for Judgment on the ground that it was duplicative of Jaffe's first lawsuit, CL01-1543.

On April 9, 2002, the Circuit Court of Henrico County conducted a hearing on the pending demurrers and pleas in CL01-1543 and CL01-2094. The Court ruled that the two law actions were duplicative, and Jaffe elected to proceed on the later filed action, CL01-2094. Accordingly, the Court entered an Order dismissing Jaffe's original action, CL01-1543. The Order specifically recited that the dismissal was with prejudice as to Jaffe's claims for breach of contract, breach of warranty and fraud, and that it was without prejudice only as to Jaffe's malpractice claim asserted in CL01-2094. A copy of the Order is attached hereto as Appendix G. Jaffe did not note any appeal of that Order.

The Henrico Circuit Court also entered an Order in CL01-2094, denying Virginia PhotoTherapy's Special Plea on the basis that the case was no longer duplicative after the Court's dismissal of CL01-1543. A copy of that Order (dated April 9, 2002) is attached hereto as Appendix H. This Order also permitted amendment of Jaffe's Motion for Judgment in CL01-2094.

Virginia PhotoTherapy then filed a Demurrer and Special Plea to Jaffe's amended pleading in CL01-2094, on the basis that Jaffe failed to allege that the hair removal procedure had been improperly performed by Virginia PhotoTherapy. Jaffe also asserted that PhotoTherapy's advertisements had violated the Food, Drug and Cosmetic Act. Virginia PhotoTherapy demurred to this allegation on the ground that the FDA only regulates the manufacture and sale of medical devices, not their use by physicians or others, that Virginia's Board of Medicine had not chosen to regulate hair removal or to treat hair removal as the practice of medicine in Virginia, and that there was no private right of action under the FDA.

On July 19, 2002, the Circuit Court heard Virginia PhotoTherapy's Demurrer and Special Plea to Jaffe's malpractice claim, CL01-2094. The Court agreed with Virginia PhotoTherapy's arguments, and dismissed Jaffe's lawsuit with prejudice. A copy of that Order (dated August 8, 2002), which Jaffe did not seek to appeal, is attached hereto as Appendix I.

Undaunted, Jaffe tried to recast his claims in federal court, filing a Complaint against Virginia PhotoTherapy, Dr. Ronald Landess, Allie Thurston, Lumenis, Ltd., and Lumenis, Inc. (the manufacturer of the hair removal equipment) in Civil Action No. 3:02CV538 (E.D. Va., Richmond Division). On September 24, 2002, the Court dismissed Jaffe's Complaint for lack of subject matter jurisdiction. A copy of the Court's Order is attached hereto as Appendix J.

Following dismissal of his federal court action, Jaffe filed a pair of additional cases in Henrico Circuit Court. His Motion for Judgment (erroneously entitled "Complaint"), CL02-1730, against Virginia PhotoTherapy was a restatement of his prior actions previously dismissed with prejudice.

Jaffe also filed a separate lawsuit, CL02-1729, against Dr. Landess, who is Virginia PhotoTherapy's sole member and manager. Virginia PhotoTherapy filed a Special Plea in each of the two cases, asserting that Jaffe's claims were barred by the doctrine of *res judicata*.

A hearing was held in the Henrico Circuit Court on January 24, 2003 in both lawsuits, *i.e.* CL02-1729 and CL02-1730. Several motions and pleas were pending at the time of the January 24, 2003 hearing, including: Jaffe's motion to disqualify Circuit Judge Hammond in both lawsuits; a plea of *res judicata* by Virginia Phototherapy in CL02-1730; and a plea of *res judicata* (based on privity with Virginia PhotoTherapy) by Dr. Landess in CL02-1729.

Jaffe erroneously alleged in the present case that Judge Hammond's first ruling at the January 24, 2003 hearing was to recuse herself from *both* cases, *i.e.* CL02-1729 and CL02-1730. See Complaint, ¶ 8 & Amended Complaint, ¶ 10. Jaffe complained that Judge Hammond nevertheless proceeded to rule on Virginia PhotoTherapy's *res judicata* plea in CL02-1730, and dismissed that case with prejudice. See Complaint, ¶ 9 & Amended Complaint, ¶ 11.

At the conclusion of the January 24, 2003 hearing, Judge Hammond entered an order, attached hereto as Appendix K, dismissing CL02-1730 as barred by *res judicata* because the Motion for Judgment alleged the same facts and claims that were raised in prior cases that had been dismissed. Judge Hammond's order specifically recited that Jaffe was present and objected to entry of the Order.[4]

Jaffe falsely represents in his Petition at p. 3 that Judge Hammond entered an Order at the conclusion of the January 24, 2003 hearing "without Jaffe's knowledge." On the contrary, Jaffe previously acknowledged in a signed pleading that he *was* in fact present when Judge Hammond entered that Order.[5] Moreover, as noted above, Judge Hammond's Order recited that Jaffe was present and objected to entry of the Order.

Because Judge Hammond *did* recuse herself from further involvement in CL02-1729, she did not make any rulings or enter any orders in connection with the pending dispositive motion in that case. Judge Hammond's rulings

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4 The Order recited that "defendant [sic] was present and objected." The notation contained an obvious typo, as Defendant Goodwin endorsed the Order under the phrase "I ask for this", on behalf of the defendant Virginia Phototherapy.

5 See Motion to Correct Clerical Omission in Previous Order, attached as Exhibit D-15 to Jaffe's Complaint ("A motions hearing was held on January 24, 2003, and an Order was entered by this Court *in the presence and over the objection of the plaintiff.*") (emphasis added).

in the January 4, 2003 hearing were therefore consistent with one another: she recused herself in CL02-1729, so she did not rule on Dr. Landess's dispositive motion; and she did not recuse herself in CL02-1730, so she was free to rule as she did on Virginia PhotoTherapy's dispositive motion.

It should be noted here that Jaffe did not contend -- and there was no evidence -- that Judge Hammond had any financial interest in the parties or any other conflict of interest that precluded her involvement in *any* of Jaffe's cases. Rather, Jaffe essentially alleged in his disqualification motions that Judge Hammond was biased against him as evidenced by the fact that she had ruled against him in the past. While disagreeing that she was unfairly biased against Jaffe, Judge Hammond essentially ruled that she would allow another Judge of the Henrico Circuit Court to deal with Jaffe after January 4, 2003. Under those circumstances, Judge Hammond was not required to recuse herself from either case. As a result, Judge Hammond was free to recuse herself in one case (CL02-1729), while disposing of the other case (CL02-1730) for which she was already prepared to rule.

On about March 17, 2003, Jaffe filed a "Motion to Correct Clerical Omission in Previous Order," essentially arguing that the January 24, 2003 Order entered by Judge Hammond failed to reflect that she had recused herself in CL02-1730. Attached to Jaffe's motion was a sketch order purporting to recite that Judge Hammond had recused herself in CL02-1730 and that she then proceeded to dismiss that case with prejudice.

A hearing was held on April 4, 2003, at which time Judge Hammond refused to enter Jaffe's proposed order which purported to reflect her recusal in CL02-1730. Instead, Judge Hammond entered a "Final Order" on April 29, 2003, attached hereto as Appendix L, which she drafted and signed without endorsement of Jaffe or Defendants as counsel for Virginia PhotoTherapy. The "Final Order" stated

that the January 24, 2003 Order "is amended to provide that plaintiff's Motion for Recusal was granted; accordingly Case No. CL02-1729 [the lawsuit against Dr. Landess] was transferred to another Judge of this Court." Id. Notably, that Order did not amend Judge Hammond's prior determination that CL02-1730 was dismissed with prejudice on *res judicata* grounds.

On the same date as the hearing, *i.e.* April 4, 2003, Judge Hammond entered an Order, attached hereto as Appendix M, recusing herself from *CL02-1729, i.e.* the lawsuit against Dr. Landess. As noted, Judge Hammond did not enter Jaffe's proposed Order recusing herself from CL02-1730.

Likewise, Judge Hammond on April 4, 2003 refused to sign Jaffe's proposed statement of facts, which purported to reflect that Judge Hammond had recused herself in both cases, *i.e.* CL02-1729 *and* CL02-1730. As a result of Judge Hammond's refusal to enter Jaffe's proposed order in CL02-1730, her refusal to sign his proposed statement of facts, and her entry of a recusal order as to CL02-1729 only, Judge Hammond repeatedly and consistently advised Jaffe that she had *not* recused herself in CL02-1730.

On April 28, 2003, Jaffe submitted his petition for appeal to the Supreme Court of Virginia in CL02-1730. One of Jaffe's arguments on appeal was that Judge Hammond had committed reversible error when she dismissed the case with prejudice after purportedly recusing herself. See Excerpts from Petition for Appeal, including Assignment of Error No. 6 on p. 11, attached hereto as Appendix N. The Supreme Court of Virginia dismissed Jaffe's petition on June 25, 2003, by Order attached hereto as Appendix O.

Jaffe then sought reconsideration of the Court's dismissal of his Petition. Notably, Jaffe's Petition for Rehearing specifically complained that he had been denied his constitutional rights upon entry of Judge Hammond's

order dismissing CL 02-1730. See Excerpts from Petition for Rehearing, including p. 4 ("... the fact that [Judge Hammond] presided after recusal serves as grounds for appeal because the allowance of such a judgement [sic] would clearly violate the Appellant's right to equal protection and a fair hearing by a neutral and detatched [sic] judge under the 14th Ammendment [sic]."), attached hereto as Appendix P. The Supreme Court of Virginia denied Jaffe's Petition for Rehearing on September 12, 2003 by Order attached hereto as Appendix Q.

Jaffe then filed a Petition for a Writ of Certiorari in this Court. Jaffe's Petition in this Court specifically complained that he had been denied his constitutional rights upon entry of Judge Hammond's order dismissing CL 02-1730 See Excerpts from Petition for a Writ of Certiorari, including Question Presented No. 4 ("This court should grant certiorari and decide the most fundamental issue of fairness and impartiality guaranteed under the 14th [sic] with regard to whether a lower court judge on motion to disqualify for bias and prejudice, does in fact disqualify and recuse themself [sic] from those matters to which recusal had been sought then, should that judge be able to affect the determination of those matters from which they are then barred."), attached hereto as Appendix R.

Jaffe's Petition for Writ of Certiorari was denied by this Court on February 23, 2004. A copy of the Court's written denial is attached hereto as Appendix S.

Notably, Jaffe's petitions to the Supreme Court of Virginia and this Court, which were both denied, involved the same claims asserted in the Complaint and Amended Complaint in this case, *i.e.* that Judge Hammond had entered a "fraudulent" order that failed to reflect her recusal in CL02-1730, that Judge Hammond's actions deprived Jaffe of his constitutional rights, etc.

With regard to the appeal of CL02-1730, Jaffe unfairly attempts to cast Judge Hammond as a conniving conspirator who deprived him of his right to an effective appeal. Thus, Jaffe complains that Judge Hammond refused to sign Jaffe's proposed statement of facts, and that the Supreme Court of Virginia then denied Jaffe's petition for appeal. However, Judge Hammond was under no obligation to sign an inaccurate statement of facts, and the Supreme Court of Virginia noted in its Order that Jaffe had not submitted a transcript of the January 24, 2003 hearing to show he stated objections with reasonable certainty. The Supreme Court of Virginia further held that Judge Hammond did not have jurisdiction to enter the April 4, 2003 "Final Order" for the simple reason that the case was already before the Supreme Court of Virginia on Jaffe's appeal from the original dismissal order entered on January 24, 2003.

On September 17, 2003, Judge Gary A. Hicks of the Henrico Circuit Court issued a letter opinion in CL02-1729, *i.e.* the lawsuit against Dr. Landess. Judge Hicks ruled that because Dr. Landess *was* in privity with Virginia PhotoTherapy, Jaffe's claims against Dr. Landess were barred by *res judicata* by virtue of the previous dismissal of all claims against the company. A copy of Judge Hicks' letter opinion is attached hereto as Appendix T. Judge Hicks then entered a Final Order in CL02-1729, dated October 20, 2003, and attached hereto as Appendix U. As a result, CL02-1729 was dismissed with prejudice.

Jaffe filed a motion to vacate Judge Hicks' dismissal order in CL02-1729. When Jaffe failed to appear at a hearing noticed for argument on Jaffe's motion to vacate, Judge Hicks entered an order on November 10, 2003, attached hereto as Appendix V, denying Jaffe's motion and imposing sanctions upon Jaffe. Judge Hicks' order recited that Jaffe "lacked a good faith basis for bringing this action," and that "Jaffe lacked a good faith basis for continued prosecution of

this case" following Judge Hammond's dismissal of CL02-1730 and the Supreme Court of Virginia's refusal to accept Jaffe's appeal.

Ironically, Jaffe complains that Judge Hammond failed to recuse herself from ruling on the motion to dismiss in CL02-1730, yet when she did recuse herself from CL02-1729 the replacement judge (Judge Hicks) not only dismissed that case but also imposed sanctions on Jaffe.

Jaffe filed a petition for appeal to the Supreme Court of Virginia in CL02-1729. The Supreme Court of Virginia denied Jaffe's petition on June 9, 2004 by Order attached hereto as Appendix W. The Supreme Court of Virginia then denied Jaffe's motion for reconsideration on October 1, 2004, by Order attached hereto as Appendix X.

On September 26, 2003, less than two weeks after the Supreme Court of Virginia refused to accept Jaffe's appeal in CL02-1730, and only nine days after Judge Hicks issued his letter opinion dismissing Jaffe's last remaining lawsuit (CL02-1729), Jaffe filed his Complaint in this case. In essence, Jaffe contended in his original Complaint that the Henrico Circuit Court's dismissal of CL02-1730 was the product of a "conspiracy" actionable under 42 U.S.C. § 1985(2).

On October 17, 2003, prior to the deadline for the Hirschler Defendants' responsive pleadings to the original Complaint, Jaffe filed an Amended Complaint which added Circuit Judge Hammond, Virginia PhotoTherapy and Dr. Landess as additional named defendants. In addition to his complaint concerning the Henrico Circuit Court's dismissal of CL02-1730, Jaffe's amended pleading also complained about the circumstances of that Court's rulings in connection with CL01-1543 and CL01-2094.

On October 30, 2003, the Hirschler Defendants filed their motion to dismiss Jaffe's Amended Complaint. Pursuant to Local Rule 7(J) of the Eastern District of Virginia, Jaffe was advised that any response to the motion must be filed within twenty (20) days of the filing of the Hirschler Defendants' motion, i.e. by November 19, 2003, and that "[t]he Court could dismiss your action on the basis of the moving party's papers if you do not file a response."[6]

On October 31, 2003, Jaffe filed three (3) motions, one of which was a motion for an extension of time in which to respond to the Defendants' motions to dismiss. In support of his motion, Jaffe described himself as a "pro se plaintiff working a full time job at night and then fighting for his civil rights during the day...." Jaffe added that he was at that time preparing his petition for certiorari to this Court in CL02-1730. (As noted, Jaffe's petition was denied on February 23, 2004).

On November 7, 2003, by Order attached hereto as Appendix E, U.S. District Judge Payne denied Jaffe's motion for additional time to file his response to the Defendants' motions to dismiss. Judge Payne ruled:

> Having reviewed the Complaint and the Amended Complaint filed by the plaintiff, and having considered the plaintiff's Motion for Extension of Time to File Responsive Pleadings, and the responses thereto, and finding that the plaintiff has ample time in which to file any response, and finding that any extension of time will merely prolong what appears to be an action over which this Court lacks subject matter

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[6] Similarly, Virginia PhotoTherapy and Dr. Landess filed their motion to dismiss on October 30, 2003, providing Jaffe with the same notice. Judge Hammond filed a motion to dismiss on November 10, 2003, also with the requisite notice pursuant to Local Rule 7(J).

> jurisdiction, it is hereby ORDERED that, in the interest of the justice and in the interest of saving expense to the parties and in the interest of judicial efficiency, the plaintiff's Motion for Extension of Time to File Responsive Pleadings is denied....

At the time of Judge Payne's November 7, 2003 Order, there still remained nearly two weeks before the deadline for Jaffe's response to the Defendants' motions to dismiss. Yet Jaffe failed to file any response to Defendants' motions. As a result, Jaffe waived all objections to Defendants' motions and failed to preserve any grounds for appeal.

On January 7, 2004, by Order attached hereto as Appendix D, U.S. District Judge Payne granted the Defendants' motions and dismissed the action, on the ground that the Court lacked subject matter jurisdiction under the *Rooker-Feldman* doctrine.[7] Judge Payne specifically found in the Order that "all claims asserted in this action are inextricably intertwined with the cases decided by the Circuit Court of Henrico County, review of which was denied by the Supreme Court of Virginia...." Id., p. 1.

On February 5, 2004, Jaffe filed his Notice of Appeal from the District Court's denial of Jaffe's motion for extension of time and from Judge Payne's dismissal of Jaffe's lawsuit. On July 15, 2004, the Court of Appeals for the Fourth Circuit issued its unpublished *per curiam* decision, attached hereto as Exhibit A, finding "no reversible error"

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[7] By subsequent Order, the District Court granted the Defendants' Rule 11 motions for imposition of monetary and non-monetary sanctions against Jaffe. The District Court has requested information from the parties concerning the appropriate amount of monetary sanctions to be imposed.

and affirming the District Court's rulings "for the reasons stated by the district court."[8]

Jaffe proceeded to file a motion for rehearing *en banc*, which the Fourth Circuit denied as "untimely" by Order dated July 30, 2004 (attached hereto as Appendix B). Jaffe then filed a motion for reconsideration of the Fourth's Circuit's July 30, 2004 Order, which the Fourth Circuit denied by Order dated October 15, 2004 (attached hereto as Appendix C). Jaffe filed his Petition for a Writ of Certiorari by mail on November 5, 2004.

THE PETITION MISREPRESENTS CRITICAL FACTS OF THIS CASE.

Jaffe's Statement of the Case contains numerous misrepresentations of fact, including the following:

Paragraph 1: Although not germane to this Petition, it bears noting that Judge Hammond rejected Jaffe's argument that Virginia Phototherapy's hair removal treatment was subject to FDA regulation and further rejected Jaffe's argument that he had any private right of action against Virginia Phototherapy. Indeed, as noted by Virginia Phototherapy, the Food and Drug Administration (FDA) regulates the interstate sale of "medical devices" but has no jurisdiction over medical procedures which are left to state medical boards. Since Jaffe did not allege any misleading advertising in connection with the sale of any device, FDA approval of Virginia Phototherapy's advertising was irrelevant.[9] Likewise, the Virginia Board of

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[8] Jaffe's reprint of the Fourth Circuit's *per curiam* opinion in the appendix to his Petition contains certain typographical errors, so the opinion is set forth in the appendix attached to this Opposition.

[9] Jaffe complained that Virginia Phototherapy advertised the procedure as "permanent hair removal", whereas FDA approval for the Epiiight device used by Virginia Phototherapy specified "permanent hair reduction."

Medicine did not regulate hair removal as a medical procedure.

Paragraph 2: As discussed above, Henrico Circuit Judge Hammond did *not* recuse herself "from all matters involving the plaintiff Jaffe", as Jaffe erroneously states. Rather, Judge Hammond recused herself in CL 02-1729, while ruling on the defendant's dispositive motion in CL 02-1730. The Supreme Court of Virginia then refused Jaffe's petitions for appeal in both of those cases, and this Court denied Jaffe's petition for certiorari in CL 02-1730.

Paragraph 3: Henrico Circuit Judge Hammond did not have "the ministerial duties" of remanding the related cases before her for hearing by a new judge...", as Jaffe erroneously states. As noted, Judge Hammond recused herself in CL 02-1730, but she was free to rule as she did in CL 02-1730. Moreover, Judge Hammond's decision to dismiss CL 02-1730 was not "improper", as Jaffe erroneously states. Rather, it is a final order which Jaffe cannot attack, especially now that the Supreme Court of Virginia has refused Jaffe's petition for appeal, and now that this Court has denied Jaffe's petition for certiorari.

Paragraph 4: Again, Henrico Circuit Judge Hammond did not make any "improper post-recusal rulings", as Jaffe erroneously states.

Paragraph 5: The Hirschler Defendants did not "intentionally and knowingly submit an incorrect order to the court," as Jaffe erroneously states. Rather, the order (Appendix F hereto) accurately reflected Henrico Circuit Judge Hammond's decision to dismiss CL 02-1730. Judge Hammond entered the order, and Jaffe's subsequent attempts to appeal Judge Hammond's decision to the Supreme Court of Virginia and this Court were unsuccessful. Moreover, as noted above, the order was *not* entered "without Jaffe's knowledge", as Jaffe erroneously states. With respect to Jaffe's statement that he was not sent

a copy of the order as entered, there is no such requirement under Virginia practice, and in any event Jaffe knew about the order because he was there when it was entered and he filed a petition to appeal its entry.

Paragraph 6: The Defendants did not owe Jaffe any "apology", and the Defendants never admitted that they "knew the order was incorrect," as Jaffe erroneously states. Moreover, Jaffe sought "corrections" which (if adopted) would have misrepresented Henrico Circuit Judge Hammond's rulings with respect to CL 02-1730. Accordingly, none of the Defendants were under any obligation to adopt Jaffe's corrections. Judge Hammond correctly refused to "correct" the record to reflect that she had recused herself in CL 02-1730, and Jaffe's attempts to appeal Judge Hammond's decision to the Supreme Court of Virginia and this Court were unsuccessful. Moreover, it bears noting that in the present case Judge Hammond denied virtually all of Jaffe's factual allegations concerning the events.

Paragraph 7: Henrico Circuit Judge Hammond's January 23, 2003 Order was not "deceitful and deliberately deficient", as Jaffe erroneously and disparagingly states. Likewise, the Defendants did not engage in any "further deceitful actions under color of state law", or thwart Jaffe's due process rights, as Jaffe states. On the contrary, Jaffe has completely abused his right to bring grievances in the courts, by filing no fewer than *seven* frivolous lawsuits which have all been dismissed. Indeed, it is *Jaffe* who has trampled on the rights of everyone with whom he has crossed paths during the course of his vindictive and unending litigation.

Paragraph 8: Henrico Circuit Judge Hammond was not required to sign Jaffe's *mis*-statement of facts. In any event, the Supreme Court of Virginia denied Jaffe's petition for appeal in CL 02-1730 for failure to submit a transcript or

written statement of facts, and this Court denied Jaffe's petition for certiorari.

Paragraph 9: Jaffe's petition for appeal in CL 02-1730 was indeed denied by the Supreme Court of Virginia, which then denied Jaffe's petition for rehearing.

Paragraph 10: Jaffe's lawsuit in this case cannot be characterized as a means "to seek a remedy for the violations of his right to due process guaranteed under the Constitution...." Rather, it was a vindictive attempt to harass Virginia PhotoTherapy and Dr. Landess, whom Jaffe had unsuccessfully sued on numerous occasions, as well as their counsel and even a presiding state court judge.

Paragraph 11: Jaffe's observation that the litigation was "concluded" upon this Court's denial of his petition for certiorari in CL 02-1730 is curious. While the litigation *should have* been "concluded" long ago, *i.e.* with the dismissal of Jaffe's *first* lawsuit, he has filed *seven* lawsuits and refuses to accept -- or respect -- the finality of any court decision.

Paragraph 12: Jaffe's lawsuit in the present case was by no means an "independent, enforceable Constitutional due process claim which is distinct from the state court judgment," as Jaffe erroneously states. Nor did this lawsuit allege any "prior injuries by officers of the court and their accomplices, under color of state law ...." Likewise, Jaffe erroneously states that his suit "is not inextricably intertwined, and does not seek to set aside the state court judgment."

Paragraph 13: The District Court's application of the *Rooker-Feldman* doctrine was not "erroneous".

REASONS FOR DENYING THE WRIT

As demonstrated below, there is no compelling reason for this Court to grant a writ of certiorari in this case. The District Court correctly dismissed Jaffe's lawsuit under the *Rooker-Feldman* doctrine, and the Fourth Circuit correctly affirmed that decision. Neither decision conflicts with a decision by this Court, or with a decision of another United States court of appeals. Moreover, both the District Court decision and the Fourth Circuit decision at issue are unpublished. The cases on which Jaffe relies are readily distinguishable. In addition, Jaffe is attempting to raise new arguments on appeal, which (in any event) are misguided and unavailing.

I. Jaffe Waived Any Right to Appellate Review by Failing to Respond to Defendants' Motions to Dismiss in the District Court.

As a preliminary matter, it should be noted that Jaffe failed to submit *any* response to Defendants' motions to dismiss, despite receiving multiple admonitions pursuant to Local Rule 7(J) of the Eastern District of Virginia. Those admonitions included the fact that "[t]he Court could dismiss your action on the basis of the moving party's papers if you do not file a response." Because Jaffe failed to respond to the Defendants' motions, he should be deemed to have waived any right to appellate review of the District Court's dismissal of this action, or of the Fourth Circuit's affirmance of that decision.[10]

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[10] Jaffe previously complained on appeal to the Fourth Circuit that the District Court had not granted his request for additional time in which to respond to the Defendants' motions to dismiss. However, Jaffe's Petition for Writ of Certiorari omits any such argument, which is therefore waived. In any event, the District Court did not abuse its discretion in denying Jaffe's motion for additional time. Indeed, Jaffe was already afforded the benefit of additional time as a *pro se* litigant pursuant to Local Rule 7(J) of the Eastern District of Virginia, and Jaffe failed to offer any good cause for his motion seeking still more time. The District

II. The District Court Correctly Dismissed Jaffe's Lawsuit for Lack of Subject Matter Jurisdiction under the *Rooker-Feldman* Doctrine.

Jaffe's original Complaint represented a frivolous attempt by an unrelenting *pro se* litigant to assert a "civil rights" cause of action against the attorneys who had successfully represented their clients in six duplicative lawsuits previously filed by Jaffe in the state and federal courts of Virginia, in connection with Jaffe's dissatisfaction with a hair removal treatment. Jaffe's Amended Complaint also named as defendants a state court judge (Hon. Catherine C. Hammond), as well as the Hirschler Defendants' clients (Virginia PhotoTherapy, LLC and Dr. Landess).

All of Jaffe's state court lawsuits have been dismissed with prejudice, and a previous federal court lawsuit was dismissed for lack of subject matter jurisdiction. What's more, Jaffe has never been at all successful in any attempt to appeal any of those adverse decisions. The Supreme Court of Virginia has refused to accept an appeal of two of those lawsuits, and this Court has refused to grant Jaffe's petition for certiorari in one of the suits. Indeed, the Supreme Court of Virginia and this Court refused to entertain any appeal despite Jaffe's arguments that Judge Hammond committed error by deciding a dispositive motion after purportedly indicating she would recuse herself, that she committed error by refusing to adopt Jaffe's statement of facts reflecting the purported "recusal", and that she committed error by entering a subsequent order without providing it as entered "nunc pro tunc." Furthermore, Jaffe has even been sanctioned by the District Court below and by the Henrico Circuit Court for his frivolous filings.

Court correctly ruled that "plaintiff has ample time in which to file any response, and ... any extension of time will merely prolong what appears to be an action over which this Court lacks subject matter jurisdiction...."

In effect, Jaffe was complaining in this case that the Hirschler Defendants and their clients conspired to violate Jaffe's civil rights by tendering a proposed order, which Judge Hammond *entered* but which Jaffe insists did not accurately reflect the judge's earlier oral ruling that she would recuse herself from the case. As the District Court correctly held, Jaffe's claims are barred by the *Rooker-Feldman* doctrine, because they are inextricably intertwined with the final decisions of the Henrico Circuit Court. In fact, the underlying premise for Jaffe's lawsuit was that Judge Hammond committed error when she dismissed Jaffe's case after purportedly indicating she would recuse herself, and Jaffe sought damages as a result of Judge Hammond's "incorrect" order.

The District Court did not have subject matter jurisdiction with respect to *any* cause of action purportedly asserted in Jaffe's Complaint or Amended Complaint, and the lawsuit was properly dismissed. "The *Rooker-Feldman* doctrine provides that 'a United States District Court has no authority to review final judgments of a state court in judicial proceedings.'" Brown & Root, Incorporated v. Breckenridge, 211 F.3d 194, 198 (4th Cir. 2000), quoting District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983). "[J]urisdiction to review such decisions lies exclusively with superior state courts and, ultimately, the United States Supreme Court." Id., quoting Plyler v. Moore, 129 F.3d 728, 731 (4th Cir. 1997), cert. denied, 524 U.S. 945, 118 S. Ct. 2359, 141 L. Ed. 2d 727 (1998).

Moreover, the *Rooker-Feldman* doctrine "bars not only direct review of issues actually decided by the state court, but also consideration of those claims which are 'inextricably intertwined' with state court decisions." Id. The Fourth Circuit has recognized that "[t]he 'inextricably intertwined' prong of the doctrine bars a claim that was not actually decided by the state court but where 'success on the

federal claim depends upon a determination that the state court wrongly decided the issues before it.'" Id., quoting Plyler v. Moore, 129 F.3d at 731.

The rationale for the *Rooker-Feldman* doctrine is that a party losing in state court should be "barred from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." Johnson v. De Grandy, 512 U.S. 997, 1005-06, 114 S. Ct. 2647, 129 L. Ed. 2d 775 (1994).

The federal courts have often applied the *Rooker-Feldman* doctrine so as to refuse to assert jurisdiction over civil rights claims that amount to an indirect attack upon the prior decisions of a state court in the litigation to which the plaintiff was a losing party. See, e.g., Hurdle v. Commonwealth of Virginia Department of Environmental Quality, 227 F. Supp. 2d 549, 556-59 (E.D. Va. 2002) (per Payne, J.) (dismissing plaintiff's civil rights claims as barred by the *Rooker-Feldman* doctrine), aff'd, 53 Fed. Appx. 256, 2002 WL 31839353 (4th Cir. 2002), cert. denied, __ U.S. __, 124 S. Ct. 327, 157 L. Ed. 2d 147 (2003).

In the present case, Jaffe's claims against the Defendants were "inextricably intertwined" with the state court litigation before the Henrico Circuit Court and the Supreme Court of Virginia. Jaffe's lawsuit was an attack upon Judge Hammond's dismissal of CL02-1730 after she purportedly indicated that she would recuse herself from the case, as well as an attack on her earlier rulings in CL01-1543 and CL01-2094. Indeed, Jaffe could not prevail in his claims against any of the Defendants without showing that the Henrico Circuit Court erroneously dismissed his state court lawsuits, and that the Supreme Court of Virginia erroneously declined to accept his appeal. Jaffe's claims were therefore barred by the *Rooker-Feldman* doctrine.

Notably, Jaffe nowhere mentions CL01-1543 or CL01-2094 in his Petition. He therefore appears to concede that the District Court properly dismissed his claims relating to those cases as barred by the *Rooker-Feldman* doctrine.

Jaffe insists in his Petition that the *Rooker-Feldman* doctrine is inapplicable to his claims concerning CL02-1730, but all of the operative facts cited by Jaffe in his Petition relate directly to the Henrico Circuit Court proceedings and Judge Hammond's orders. For example, Jaffe complains that Judge Hammond made "improper rulings" by dismissing CL 02-1730 (Petition, p. 3), that Judge Hammond made "improper post-recusal rulings" (id.), that the order submitted by the Hirschler Defendants and entered by Judge Hammond was "an incorrect order" (id.), that the order was "deceitful and deliberately deficient" (id., p. 4), and that Judge Hammond violated the Rules of the Supreme Court of Virginia by refusing to sign Jaffe's proposed statement of facts (id.). In fact, Jaffe concludes that the reason he lost his appeal before the Supreme Court of Virginia was that Judge Hammond entered the "improper", "deceitful" and "deliberately deficient order" without properly correcting it by a subsequent order. Id.

It was also abundantly clear from Jaffe's pleadings that he sought federal court review of the state court proceedings. Indeed, Jaffe alleged in paragraph 23 of his Amended Complaint that he was injured "as a proximate result of the aforementioned malicious, fraudulent and false rendering of a fraudulent court order and the ongoing conspiracy to perpetrate that fraud...."

Jaffe insists that he does not attack any of the state court judgments, but only Judge Hammond's "ministerial acts" which deprived him of his constitutional rights to litigate his claims. Essentially, Jaffe contends that Judge Hammond's judgment consisted of her oral statements at the January 24, 2003 hearing, and that her subsequent written orders were merely "ministerial". However, the

Supreme Court of Virginia has held that "[i]t is the well-established law of this Commonwealth that a circuit court speaks only though its written orders." Berean Law Group, P.C. v. Cox, 259 Va. 622, 626, 528 S.E.2d 108 (2000). See also Wagner v. Shird, 257 Va. 584, 588, 514 S.E.2d 613 (1999). As a result, Judge Hammond's written orders were not merely "ministerial" actions documenting an earlier adjudication. Rather, those written orders constituted the dispositive rulings which Jaffe seeks to overturn.

III. The District Court's Dismissal of Jaffe's Lawsuit Based on the *Rooker-Feldman* Doctrine Does Not Conflict with Any Decisions of Circuit Courts or this Court.

Contrary to Jaffe's arguments, the dismissal of his claims under the *Rooker-Feldman* doctrine does *not* conflict with any decisions from other circuits or from this Court. In addition to misconstruing the cases cited in his Petition, Jaffe is attempting to raise arguments that he never raised in the District Court or the Fourth Circuit.

For example, Jaffe's citation to the Third Circuit's decision in Gulla v. North Strabane Township, 146 F.3d 168 (3d Cir. 1998), is entirely misplaced. In that case, the plaintiffs had initially brought a state court action seeking to appeal the township's approval of subdivision of land adjacent to the plaintiffs' property. The state court held that under Pennsylvania law the plaintiffs lacked standing to challenge the subdivision approval, and the court dismissed the plaintiffs' action. The plaintiffs then brought suit in federal court for various alleged constitution claims arising out of the alleged taking or interference with their property rights. The District Court dismissed the plaintiffs' claims under the *Rooker-Feldman* doctrine, and a divided Third Circuit reversed the District Court. The Third Circuit emphasized that the state court action had been dismissed

only for lack of standing, and that the plaintiffs' constitutional claims had not been at issue in the state court proceedings.

Whether or not the Gulla decision was a correct application of the *Rooker-Feldman* doctrine is immaterial. (The decision was 2-1, with a dissenting opinion that the federal claims were barred by the *Rooker-Feldman* doctrine). Suffice it to say that Jaffe's state court suits, including CL 02-1730, were not dismissed for lack of standing. Rather, CL 02-1730 was dismissed with prejudice on *res judicata* grounds. In addition, the specific complaint raised by Jaffe in the present action, *i.e.* that Henrico Circuit Judge Hammond entered an "improper" order after purportedly recusing herself from the case, was raised by Jaffe in his unsuccessful attempts to appeal from that order to the Supreme Court of Virginia and to this Court.

Jaffe's citation to FOCUS v. Allegheny County Court of Common Pleas. 75 F.3d 834 (3d Cir. 1996), is similarly misplaced. In that case, the Third Circuit held that the *Rooker-Feldman* doctrine did not preclude a citizens' advocacy group and two of its members from raising constitutional challenges to state court gag orders that had been entered in a child custody case to which the plaintiffs were not parties. The advocacy group had unsuccessfully attempted to intervene in the state court proceedings, and its constitutional claims were not addressed by the state court. Notably, the Court in FOCUS held that "*Rooker-Feldman* applies only when in order to grant the federal plaintiff the relief sought, the federal court must determine that the state court judgment was erroneously entered or must take action that would render that judgment ineffectual." Id. at 840. That is exactly what Jaffe was seeking in the lawsuit that he filed in the District Court, *i.e.* a determination that Judge Hammond's dismissal order in CL 02-1730 was "incorrect". Moreover, Jaffe was a party in CL 02-1730 (and the other cases), and he specifically raised the

issue, albeit unsuccessfully, whether Henrico Circuit Judge Hammond had exceeded her authority by entering a dismissal in that case.

Jaffe's citation to Robinson v. Ariyoshi, 753 F.2d 1468 (9th Cir. 1985), is not only misplaced but also fails to note that the Ninth Circuit's decision was vacated by Order of this Court. See Ariyoshi v. Robinson, 477 U.S. 902, 106 S. Ct. 3269, 91 L. Ed. 2d 560 (1986) (granting certiorari and vacating Ninth Circuit decision). In any event, the Ninth Circuit's discussion of the *Rooker-Feldman* doctrine does not conflict with the application of that doctrine in the present case. In Robinson, the Ninth Circuit held that *Rooker-Feldman* did not preclude a federal court challenge to threatened interference with the plaintiffs' irrigation water rights, where the Hawaii Supreme Court specifically declined to address the plaintiffs' constitutional challenges.

In the present case, by contrast, the state courts did not "refuse" to entertain Jaffe's constitutional challenges and thereby defer to the federal courts for adjudication of such issues. Rather, Jaffe's challenges to the dismissal of CL 02-1730 were rejected by Judge Hammond, and the Supreme Court of Virginia declined to consider any appeal because Jaffe had not adequately preserved the record on appeal. Notably, this Court denied Jaffe's Petition for Writ of Certiorari in CL 02-1730, thereby refusing to entertain Jaffe's *constitutional* challenges to Judge Hammond's actions in that case.

Jaffe's citation to Johnson v. DeGrandy, 512 U.S. 997, 114 S. Ct. 2647, 129 L. Ed. 2d 777 (1994), is also misplaced. In Johnson, this Court held that an action brought by the United States seeking to challenge a Florida legislative districting plan was not precluded by the *Rooker-Feldman* doctrine, where the United States was not a party to a prior court action involving the plan. The Court held that the United States therefore "was in no position to ask this Court to review the state court's judgment and has not directly

attacked it in this proceeding." Id., 512 U.S. at 1006. Here, by contrast, Jaffe was a party to CL 02-1730 and did in fact ask the Circuit Court, the Supreme Court of Virginia and this Court to review Judge Hammond's decision to dismiss the case after purportedly indicating her recusal.

Likewise, in Southern California Edison Co. v. Lynch, 307 F.3d 794 (9th Cir. 2002), also cited by Jaffe, the Court held that *Rooker-Feldman* did not apply where the federal court plaintiff had not been a party to the underlying state court action.

Notably, this Court has not ruled that there must be complete mutuality of parties in order for the *Rooker-Feldman* doctrine to apply. Indeed, it would undermine the policy of that doctrine to permit a federal court plaintiff to avoid its application merely by adding as defendants several persons who were not involved in the state court proceedings. In any event, the parties to the present action include the defendants in the underlying litigation, *i.e.* Virginia PhotoTherapy and Dr. Landess, together with their counsel and Judge Hammond.

Jaffe also cites to the dissenting opinion in Kamilewiecz v. Bank of Boston Corp., 100 F.3d 1348 (7th Cir. 1996), cert. denied, 520 U.S. 1204, 117 S. Ct. 1569, 137 L. Ed. 2d 714 (1997), although Jaffe's discussion erroneously implies that he is citing to the majority opinion. In fact, the Seventh Circuit in that case *denied* a petition for rehearing of a decision which *applied* the *Rooker-Feldman* doctrine. The Seventh Circuit therefore let stand an earlier decision affirming the dismissal of a federal court action brought by the former plaintiffs in a state class action against the former state court defendants and their counsel. See Kamilewiecz v. Bank of Boston Corp., 92 F.3d 506 (7th Cir. 1996).

Accordingly, there is no conflict in the authority of this Court and the circuits as to the proper application of *Rooker-Feldman* doctrine to Jaffe's frivolous attack upon a final state court order.

IV. The Dismissal of Jaffe's Lawsuit Is Further Supported by the Obvious Frivolousness of Jaffe's Claims.

As a result of its rulings, the District Court was not required to consider other grounds for the Defendants' motions to dismiss, and the Fourth Circuit on appeal affirmed the dismissal based on the *Rooker-Feldman* doctrine. However, there were many additional grounds on which Jaffe's lawsuit was subject to dismissal, and they can be summarized briefly as follows.

First, as a matter of law, Jaffe could not state any claim whatsoever, under federal civil rights law or otherwise, arising out of an adversary's tender of a proposed order during the course of state court litigation. Indeed, the federal courts have routinely dismissed civil rights claims against attorneys and others involved in the plaintiffs' prior unsuccessful litigation. Davis v. Hudgins, 896 F. Supp. 561 (E.D. Va. 1995) (dismissing civil rights claims against attorneys and others, and awarding Rule 11 sanctions against *pro se* plaintiff), aff'd, 87 F.3d 1308 (4th Cir. 1996), cert. denied, 520 U.S. 1172, 117 S. Ct. 1440, 137 L. Ed. 2d 546 (1997). See also Briscoe v. LaHue, 663 F.2d 713 (7th Cir. 1981) (affirming dismissal of civil rights claims against former criminal defense counsel, prosecutors, trial judges, witnesses and court reporters), aff'd, 460 U.S. 325, 103 S. Ct. 1108, 75 L. Ed. 2d 96 (1983); Waits v. McGowan, 516 F.2d 203 (3rd Cir. 1975) (affirming dismissal of civil rights claims against public defender, prosecutor, state judges and state investigatory); Steward v. Meeker, 459 F.2d 669 (3rd Cir. 1972) (affirming dismissal of civil rights claims by prisoner against former counsel); Haldane v. Chagnon, 345 F.2d 601 (9th Cir. 1965) (dismissing civil rights claims by litigant

against judges, attorney and baliff); Raitport v. Provident National Bank, 451 F. Supp. 522 (E.D. Pa. 1978) (dismissing civil rights claims against, inter alia, counsel for plaintiff's creditors); Hamilton v. Jamieson, 355 F. Supp. 290 (E.D. Pa. 1973) (dismissing civil rights claims against judges, prosecutors and defense attorneys) Phillips v. Singletary, 350 F. Supp. 297 (D.S.C. 1972) (dismissing civil rights claims against former criminal defense counsel and others); Myers v. Couchara, 313 F. Supp. 873 (E.D. Pa. 1970) (denying plaintiff's petition to prosecute civil rights action against his privately retained counsel in forma pauperis); Moore v. Frazier, 316 F. Supp. 318, 320 (D. Neb. 1970) (dismissing civil rights action against former criminal defense attorney and others); Jemzura v. Belden, supra (dismissing civil rights claim against state officials and attorneys by unsuccessful litigant in marital litigation); Pugliano v. Staziak, 231 F. Supp. 347 (W.D. Pa. 1964) (dismissing civil rights action under Sections 1983 and 1985 brought against prosecuting attorney and plaintiff's prior criminal defense attorney), aff'd, 345 F.2d 797 (3rd Cir.1965).

Second, 42 U.S.C. § 1985(2) was the only statutory provision cited by Jaffe as the basis for asserting federal court jurisdiction and a cause of action against any of the Defendants in this case. Jaffe failed to allege any facts suggesting a conspiracy to deny Jaffe's equal protection of the law, as envisioned by Section 1985(2). See Simmons v. Poe, 47 F.3d 1370, 1377 (4th Cir. 1995) (noting that the Court has "rarely, if ever, found that a plaintiff has set forth sufficient facts to establish a Section 1985 conspiracy," and that Section 1985 claims have been rejected "whenever the purported conspiracy is alleged in a merely conclusory manner, in the absence of supporting facts.").

Third, Defendants cannot be sued civilly for past litigation-related acts, especially where the prior courts issued final orders *without* any award of sanctions. Defendants enjoy immunity from the type of litigation-related complaints lodged by Jaffe. See Farese v. Scherer, 342 F.3d 1223, 1232 (11th Cir. 2003).

Fourth, any objections to entry of an order, and any complaint as to an adverse counsel's conduct, can only be raised in a timely manner and in the court that entered the offending order.

Fifth, as noted above, it is well established in Virginia law that a court acts only through its written orders. Jaffe could not be heard to complain that Judge Hammond orally recused herself before entering a written order dismissing one of his lawsuits. In any event, Jaffe failed to allege any facts establishing that Judge Hammond was *required* to recuse herself, so there would be no basis on which Jaffe could challenge the Judge's dismissal of his lawsuit even if the Judge *had* orally indicated an intent to recuse herself.

Sixth, Jaffe's claims in this case are themselves barred by the doctrines of *res judicata* and collateral estoppel. See Londono-Rivera v. Commonwealth of Virginia, 155 F. Supp.2d 551, 565 (E.D. Va. 2001) (per Payne, J.) (dismissing claims as barred by collateral estoppel).

Seventh, Jaffe failed to allege that he suffered any injury, *i.e.* that his lawsuit in CL02-1730 would not have been dismissed on *res judicata* grounds and that he would have then obtained a money judgment in his lawsuit against Virginia PhotoTherapy, but for the alleged conduct of the Defendants. Indeed, as noted above, Jaffe's suit in CL 02-1729 was dismissed on *res judicata* grounds by a judge other than Judge Hammond, and the judge in that case actually *sanctioned* Jaffe for filing that case.

CONCLUSION

For the foregoing reasons, the Hirschler Respondents respectfully request that the Petition for Writ of Certiorari be denied.

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-1163

ALLEN V. JAFFE,

Plaintiff - Appellant,

versus

LISA SPICKLER GOODWIN, Attorney; JOHN R. WALK, Attorney; HIRSCHLER, FLEISCHER. WEINBERG, COX AND ALLEN, P.C., a professional corporation; VIRGINIA PHOTOTHERAPY, L.L.C.; RONALD MARK LANDESS, Doctor, DPM; CATHERINE HAMMOND, Judge,

Defendants - Appellees.

[ENTERED: JULY 15, 2004]

Appeal from the United States district Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, District Judge. (CA-03-799)

Submitted: June 30, 2004 Decided: July 15, 2004

Before MOTZ, SHEDD, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Allen V. Jaffe, Appellant Pro Se. Robert Emery Draim, David Drake Hudgins, HUDGINS LAW FIRM, Alexandria, Virginia, Charles Frederick Witthoefft, HIRSCHLER, FLEISCHER, Richmond, Virginia; James Walker Hopper, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Allen V. Jaffe appeals the district court's orders denying his motion for extension of time to file responsive pleadings and dismissing his complaint for lack of subject matter jurisdiction. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. See Jaffe v. Goodwin, No. CA-03-799 (E.D. Va. Nov. 7, 2003; Jan. 7, 2004). Although we decline to impose sanctions on Jaffe for pursuing this appeal at this time, we caution that further frivolous or malicious filings before this court or in the district court could result in sanctions. We express no opinion as to the motion for sanctions "under Fed. R. Civ. P. 11 pending in the district court. Accordingly, we deny all Appellees' motions for sanctions. We further grant Appellees" motions to strike "Appellant's Answer to Appellees' Reply Brief in Support of Rule 35 Motion for Sanctions." We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
July 30, 2004

No. 04-1163
CA-03-799

ALLEN V. JAFFE
Plaintiff - Appellant

V.

LISA SPICKLER GOODWIN, Attorney; JOHN R. WALK, Attorney; HIRSCHLER, FLEISCHER, WEINBERG, COX AND ALLEN, P.C., a professional corporation; VIRGINIA PHOTOTHERAPY, L.L.C.; RONALD MARK LANDESS, Doctor, DPM; CATHERINE HAMMOND, Judge
Defendants - Appellees

[ENTERED: JULY 30, 2004]

ORDER

The appellant has filed an untimely petition for rehearing en banc. This Court strictly enforces the time limits for filing petitions for rehearing en banc.

The Court denies the petition for rehearing en banc as untimely filed.

For the Court - By Direction

/s/ Patricia S. Connor
CLERK

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

FILED
October 15, 2004

No. 04-1163
CA-03-799

ALLEN V. JAFFE
Plaintiff - Appellant

LISA SPICKLER GOODWIN, Attorney; JOHN R. WALK, Attorney; HIRSCHLER, FLEISCHER, WEINBERG, COX AND ALLEN, P.C., a professional corporation; VIRGINIA PHOTOTHERAPY, L.L.C.; RONALD MARK LANDESS, Doctor, DPM; CATHERINE HAMMOND, Judge
Defendants - Appellees

[ENTERED: OCTOBER 15, 2004]

ORDER

The appellant has filed a motion for reconsideration of the order denying his petition for rehearing and suggestion for rehearing en banc.

The Court denies the motion for reconsideration.

For the Court,

/s/ Patricia S. Connor
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

ALLEN V. JAFFE,

Plaintiff,

v. Civil Action No. 3:03cv799

LISA SPICKLER GOODWIN; JOHN R. WALK; HIRSCHLER FLEISHER; VIRGINIA PHOTOTHERAPY, L.L.C.; DR. RONALD MARK LANDESS; and JUDGE CATHERINE HAMMOND,

Defendants.

[ENTERED: JANUARY 7, 2004]

ORDER

Having reviewed the Complaint and the Amended Complaint herein, and the Motions to Dismiss the Amended Complaint filed by all defendants, and having reviewed the plaintiff's Motion To Present All Arguments On Motions And Special Pleas In Writing, and the responses thereto, and it appearing from the record that all claims asserted in this action are inextricably intertwined with the cases decided by the Circuit Court of Henrico County, review of which was denied by the Supreme Court of Virginia, it is hereby ORDERED that the Motion to Dismiss this action is granted because the Court lacks subject matter jurisdiction herein under the Rooker-

Feldman doctrine. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); Hurdle v. Commonwealth of Virginia Department of Environmental Quality, 227 F. Supp.2d 549, (E.D. Va. 2002). The action is DISMISSED without prejudice to any appeal currently pending in the state court system or from the decisions of the Supreme Court of Virginia.

In view of the decision to grant the Motions to Dismiss this action, it is hereby ORDERED that the plaintiff's Motion To Present All Arguments On Motions And Special Pleas In Writing is denied as moot.

It is further ORDERED that the facts and legal contentions are adequately presented in the materials before the Court and oral argument would not aid the decisional process.

The Initial Pretrial Conference set for January 22, 2004 is cancelled as no longer necessary.

This Order may be appealed by the plaintiff. Any appeal from this decision must be taken by filing a written notice of appeal with the Clerk of the Court within thirty (30) days of the date of entry hereof. Failure to file a timely notice of appeal may result in the loss of the right to appeal.

Nothing herein shall foreclose further prosecution of the pending motions under Fed. R. Civ. P. 11 as to which the requisite safe harbor letters previously have been issued to the plaintiff by the

defendants. Therefore, the Court shall retain jurisdiction for the purpose of adjudicating such motions.

The Clerk is directed to send a copy of this Order to the plaintiff and to counsel for the defendants.

It is so ORDERED.

/s/
United States District Judge

Richmond, Virginia
Date: January 7, 2004

IN THE UNITED STATES DISTRICT COURT OF VIRGINIA
Richmond Division

ALLEN V. JAFFE,

Plaintiff,

v. Civil Action No. 3:03cv799

LISA SPICKLER GOODWIN; JOHN R. WALK; HIRSCHLER FLEISHER; VIRGINIA PHOTOTHERAPY, L.L.C.; DR. RONALD MARK LANDESS; and JUDGE CATHERINE HAMMOND,

Defendants.

[ENTERED: NOVEMBER 7, 2003]

ORDER

Having reviewed the Complaint and the Amended Complaint filed by the plaintiff, and having considered the plaintiff's Motion For Extension Of Time To File Responsive Pleadings, and the responses thereto, and finding that the plaintiff has ample time in which to file any response, and finding that any extension of time will merely prolong what appears to be an action over which this Court lacks subject matter jurisdiction, it is hereby ORDERED that, in the interest of the justice and in the interest of saving expense to the parties and in the interest of judicial efficiency, the plaintiff's Motion For Extension Of Time To File Responsive Pleadings is denied.

It is further ORDERED that the facts and legal contentions are adequately presented in the materials before the Court and oral argument would not aid the decisional process.

The Clerk is directed to send a copy of this Order to the plaintiff and to counsel for the defendants.

It is so ORDERED.

/s/
United States District Judge

Richmond, Virginia
Date: November 7, 2003

VIRGINIA:

IN THE CIRCUIT COURT FOR THE
COUNTY OF HENRICO

ALLEN VALENTINO JAFFE,

Plaintiff.

v. Case No. CH01-1438

VIRGINIA PHOTOTHERAPY, L.L.C.,

Defendant.

[ENTERED: MARCH 8, 2002]

ORDER

This day came defendant Virginia Phototherapy, L.L.C., by counsel, and plaintiff Allen V. Jaffee, pro se, and argued defendant's Demurrer herein:

It appearing to the Court from plaintiffs allegations that he does not allege he is presently a patient of defendant or that he is in any way in jeopardy of imminent irreparable harm: and

It appearing to the Court that plaintiff has no standing to seek an injunction on behalf of third persons who are not parties to this action:

It hereby ORDERED that this matter be dismissed with prejudice.

Date: 3/8/02

_____

Judge

I ask for this:

/s/ John R. Walk

John R. Walk (VSB No. 19697)
HIRSCHLER FLEISCHER
701 East Byrd Street (23219)
Post Office Box 500
Richmond, Virginia 23218-0500
Phone: (804) 771-9519
Fax: (804) 644-0957
Counsel for Virginia PhotoTherapy, L.L.C.

Seen and Objected to:

/s/ Allen Valentino Jaffe

Allen Valentino Jaffe

VIRGINIA:

IN THE CIRCUIT COURT FOR THE
COUNTY OF HENRICO

ALLEN VALENTINO JAFFE,
Plaintiff,

v. Case No. CL01-2094

VIRGINIA PHOTOTHERAPY, L.L.C.,
Defendant.

[ENTERED: APRIL 9, 2002]

ORDER

This day came the parties and argued the Special Plea filed by defendant Virginia PhotoTherapy, L.L.C. and the Motion for Leave to Amend filed by plaintiff. Allen V. Jaffe in this matter:

Based upon the Order entered this day dismissing the matter styled Jaffe v. Virginia PhotoTherapy., L.L.C., No. CL01-1543, there are no longer duplicative matters pending before the Court; accordingly, it is hereby ORDERED that defendant's Special Plea is denied;

It appearing to the Court that it would be in the interests of justice to do so, it is further ORDERED that plaintiffs Motion for Leave to Amend is granted; that plaintiffs Amended Motion for Judgment dated March 1, 2002, previously tendered to the Clerk, shall be considered "Filed" as of the date of this Order; and that

defendant shall plead in response thereto within twenty-one (21) days of the date of this Order:

It appearing that plaintiff has already filed numerous amendments without obtaining leave of Court, it is ORDERED that no further amendments of plaintiffs claim will be permitted by the Court: and

Defendant's Special Plea having been denied, it his hereby ORDERED that defendant's motion for sanctions be denied.

ENTER: 4/9/02

/s/ _____
JUDGE

I Ask for This:

/s/ John R. Walk
John R. Walk (VSB No. 19697)
HIRSCHLER FLEISCHER
701 East Byrd Street (23219)
Post Office Box 500
Richmond, Virginia 23218-0500
Phone: (804) 771-9519
Fax: (804) 644-0957

Counsel for Virginia PhotoTherapy, I

Seen and Objected to:

/s/ Allen Valentino Jaffe
Allen Valentino Jaffe, *pro se*
1309 Old Buckingham Drive, Apt. 2C
Midlothian, Virginia 23113

VIRGINIA:

IN THE CIRCUIT COURT FOR HENRICO COUNTY

ALLEN VALENTINO JAFFE,

Plaintiff,

v. Case No. CL01-1543

VIRGINIA PHOTOTHERAPY, L.L.C.,

[ENTERED: APRIL 9, 2002]

ORDER

This day came the parties and argued the Demurrer filed by defendant Virginia PhotoTherapy, L.L.C.;

It appearing to the Court that the Motion for Judgment herein fails to reasonably apprise defendant of the true nature of plaintiffs claim as required by Rule 1:4(d) of the Rules of the Supreme Court of Virginia; and

It appearing to the Court that plaintiff has filed another action against defendant arising from the same subject matter as this action (No. CL01-2094), and upon the representation by plaintiff that he wishes to proceed on the Amended Motion for Judgment dated March 1, 2002 tendered to the Clerk in that action;

It is hereby ORDERED that defendant's Demurrer be sustained and that this action be dismissed, said dismissal to be with prejudice to any claims for

breach of contract, breach of warranty or for fraud, but without prejudice to plaintiffs right to proceed on the claim for medical malpractice set forth in the Amended Motion for Judgment in Case No. CL01-2094.

ENTER: 4/9/02

/s/ _____
JUDGE

I Ask for This:

/s/ John R. Walk
John R. Walk (VSB No. 19697)
HIRSCHLER FLEISCHER
701 East BYRD Street (23219)
Post Office Box 500
Richmond. Virginia 23218-0500
Phone: (804) 771-9519
Fax: (804) 644-0957

Counsel for Virginia PhotoTherapy, L.L.C.

Seen and Objected to:

/s/ Allen Valentino Jaffe
Allen Valentino Jaffe, *pro se*
1309 Old Buckingham Drive, Apt. 2C
Midlothian, Virginia 23113

VIRGINIA:

IN THE CIRCUIT COURT FOR THE
COUNTY OF HENRICO

ALLEN VALENTINO JAFFE,
Plaintiff,

v. Case No. CL01-2094

VIRGINIA PHOTOTHERAPY, L.L.C.,
Defendant.

[ENTERED: AUGUST 8, 2002]

ORDER

This day came the parties and argued the Demurrer and Special Plea filed by defendant Virginia PhotoTherapy, L.L.C. in this matter;

It appearing to the Court that the Motion for Judgment does not state a cause of action and fails to state facts upon which the relief demanded can be granted;

It is hereby ORDERED that defendant's Demurrer be sustained and that this action be dismissed, said dismissal to be with prejudice.

Based on the foregoing, defendant's Special Plea is denied.

The objections of plaintiff, Allen V. Jaffe, to the Court's rulings are hereby noted.

ENTER: 8/8/02

/s/ _____
JUDGE

I Ask for This:

/s/ Lisa S. Goodwin
John R. Walk (VSB No. 19697)
Lisa Spickler Goodwin (VSB No. 37804)
HIRSCHLER FLEISCHER
701 East Byrd Street (23219)
Post Office Box 500
Richmond, Virginia 23218-0500
Phone: (804) 771-9519
Fax: (804) 644-0957

Counsel for Virginia PhotoTherapy, L.L.C.

Seen and Objected to:

/s/ Allen Valentino Jaffe
Allen Valentino Jaffe, *pro se*
1309 Old Buckingham Drive, Apt. 2C
Midlothian, Virginia 23113

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

ALLEN V. J.AFFE.
Plaintiff,

v.

LUMENIS, LTD., et al.,
Defendants.

Civil Action Number 3:02CV538

[ENTERED: SEPTEMBER 24, 2002]

FINAL ORDER

This matter is before the Court on the Complaint filed by the plaintiff on July 29, 2002, the pending motions to dismiss, plaintiff's motion to present arguments in writing, and the other pending motions. First, finding that oral argument would not aid the decisional process, the Court GRANTS the plaintiff's motion to present arguments in writing.

The Complaint alleges diversity jurisdiction pursuant to Title 2S U.S.C. § 1332(a). Plaintiff alleges that "Plaintiff resides in Virginia, and not all defendants reside there." Federal courts are courts of limited jurisdiction. Title 28 U.S.C. § 1330 *et seq.* sets forth the various ways in which a federal court may have jurisdiction over an action. Most actions filed in

federal court are brought under either 28 U.S.C. § 1331, which applies if there is federal question jurisdiction, where the matter arises "under the Constitution, laws, or treaties of the United States," or under 28 U.S.C. § 1332, which applies only if (1) there is complete diversity of citizenship between the plaintiff and the defendants and (2) the amount in controversy exceeds $75.000.

There is no federal question jurisdiction in this case. The plaintiff does not state a federal claim. Accordingly, there is no jurisdiction pursuant to 2S U.S.C. § 1331.

In addition, there is not complete diversity between the plaintiff and the various defendants. In Wisconsin Department of Corrections v. Schact, 524 U.S. 381, 388 (1998), the Court held that "[a] case falls within the federal district court's 'original' diversity 'jurisdiction' only if diversity of citizenship among the parties is complete, i.e., only if there is no plaintiff and no defendant who are citizens of the same State." Further, "[t]he presence of the nondiverse party automatically destroys original jurisdiction: No party need assert the defect. No party can waive the defect, or consent to jurisdiction. No court can ignore the defect; rather, a court, noticing the defect, must raise the matter on its own." Id. at 389 (citations omitted). Therefore, based on the Court's review of the Complaint, the Court FINDS that there is not complete diversity so there is no jurisdiction pursuant to 28 U.S.C. § 1332. Accordingly, the Court GRANTS the defendants' motions to dismiss, pursuant to Rule 12(b)(1).

Given the Court's lack of subject matter jurisdiction, the Court DENIES plaintiffs motions for default judgment and to quash the motions to dismiss. However, the Court notes that because the defendants timely filed and served their motions to dismiss, no defendant would have been in default had this Court had subject matter jurisdiction. In addition, plaintiff's motions to overrule the defendants' objections to plaintiffs various discovery requests and to compel responses to his discover requests are DENIED as MOOT, given the Court's lack of jurisdiction.

For these reasons, this matter is DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION.

It is so ORDERED.

The Clerk is DIRECTED to send a copy of this Order to the plaintiff who is proceeding *pro se* and to all counsel of record.

Plaintiff is advised that he has the right to appeal the decision of the Court. Should he wish to do so, written notice of appeal must be filed with the Clerk of the Court within thirty (30) days of the date of entry hereof. Failure to file a timely notice of appeal may result in the loss of the right to appeal.

SEP 24 2002
DATE

/s/
SENIOR UNITED STATES DISTRICT JUDGE

VIRGINIA:

IN THE CIRCUIT COURT FOR THE
COUNTY OF HENRICO

ALLEN V. JAFFE,
Plaintiff.

v. Case No. CL02-1730

VIRGINIA PHOTOTHERAPY, L.L.C.,
Defendant.

[ENTERED: JANUARY 24, 2003]

ORDER

This day came the parties and argued the Special Plea and Motion for Sanctions filed by defendant Virginia PhotoTherapy, L.L.C., in this matter;

It appearing to the Court that the Order entered on April 9, 2001 dismissing the matter styled Jaffe v. Virginia PhotoTherapy, L.L.C., No. CL01-1543, dismissed with prejudice any claims for breach of contract, breach of warranty or for fraud; and the Order entered on August S. 2002 dismissing the matter styled Jaffe v. Virginia PhotoTherapy, L.L.C., No. CL01-2094, dismissed with prejudice the claim for medical malpractice, and

It appearing to the Court that the Motion for Judgment herein is barred by the doctrine of res judicata because it is based on identical facts, states identical claims and/or claims chat could have been raised in the prior cases, is by and against identical parties, and seeks monetary damages;

It is hereby ORDERED that defendant's Special Plea be sustained and that this action be dismissed, said dismissal to be with prejudice.

It is hereby ORDERED that defendant's Motion for Sanctions be denied.

Defendant was present and objected.

ENTER: 1/24/03

/s/ _____
JUDGE

I Ask for This:

/s/ Lisa S. Goodwin
John R. Walk (VSB No. 19697)
Lisa Spickler Goodwin (VSB No. 37804)
HIRSCHLER FLEISCHER
701 East Byrd Street (23219)
Post Office Box 500
Richmond, Virginia 23218-0500
Phone: (804) 771-9519
Fax: (804) 644-0957
Counsel for Virginia PhotoTherapy, L.L.C.

Seen and Objected to:

_____

Allen Valentino Jaffe, *pro se*
3211 Fox Chase Drive
Midlothian, Virginia 23112

VIRGINIA:

IN THE CIRCUIT COURT OF THE
COUNTY OF HENRICO

ALLEN V. JAFFE,

PLAINTIFF,

V. CASE NUMBER CL02-1730-00

VIRGINIA PHOTOTHERAPY, L.L.C.,

DEFENDANT.

[ENTERED: APRIL 29, 2003]

FINAL ORDER

On April 4, 2003, came the plaintiff, pro se, and the defendant, by counsel, on the papers formerly read and on cross-motions, and the case was argued. Whereupon it is ORDERED that

No Statement of Facts is certified because this case was dismissed with prejudice on a special plea of res judicata.

The Order entered January 24, 2003 is amended, over defendant's objection that twenty-one days have expired. The Order is amended to provide that plaintiff's Motion for Recusal was granted; accordingly Case Number CL02-1729-00 was transferred to another Judge of this Court. The amendment is ordered because the Order entered January 24, 2003 was prepared by the defendant, did

not include the Court's oral ruling granting the Motion for Recusal, was not endorsed by plaintiff, and did not provide for the Clerk to sent a copy of the Order to plaintiff, who, in fact did not receive the Order within the twenty-one days of its entry. Accordingly plaintiff's Motion to Reconsider was timely filed. Rule 1:9.

The Clerk is directed to forward a copy of this Order to the plaintiff, Allen V. Jaffe, 3211 Fox Chase Drive, Midlothian, Virginia 23112, and to Lisa Goodwin, Esquire, counsel for the defendant at Hirschler Fleischer, Post Office Box 500, Richmond, Virginia 23218-0500.

ENTER: APRIL 29, 2003

/s/ _____
Judge

VIRGINIA:

IN THE CIRCUIT COURT FOR THE
COUNTY OF HENRICO

ALLEN V. JAFFE,
PLAINTIFF,

V. CASE NO. CL CLO2-1729

DR. RONALD MARK LANDESS, DPM
DEFENDANT,

[ENTERED: APRIL 4, 2003]

ORDER

On Jan 9, 2003

PLAINTIFF ALLEN V. JAFFE FILED A MOTION TO DISQUALIFY JUDGE HAMMOND, PURSUANT TO PART 6, SECTION III, CANON 3(C) OF THE RULES OF THE SUPREME COURT OF VIRGINIA. ON CONSIDERATION OF THE EVIDENCE AND THE FACTS AND CIRCUMSTANCES OF THIS CASE,

IT IS ORDERED THAT PLAINTIFF'S MOTION IS GRANTED, AND THIS ACTION WILL BE REFERRED TO THE CHIEF JUDGE OF THIS CIRCUIT FOR REASSIGNMENT TO A ~~SUBSTITUE~~ TRIAL JUDGE.

ENTER: 4/4/03

/s/
JUDGE HAMMOND

I ASK FOR THIS:

/s/ ALLEN V. JAFFE
ALLEN V. JAFFE, PRO SE
3211 FOX CHASE DRIVE
MIDLOTHIAN, VIRGINIA 23112
PHONE: 804-744-2383

SEEN AND OBJECTED TO:

/s/ Lisa S. Goodwin
LISA SICKLER GOODWIN (VSB NO. 37804)
ATTORNEY FOR DEFENDANT
701 EAST BYRD STREET
RICHMOND, VIRGINIA 23219
PHONE: 804-771-9519

IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

RECORD NO.

ALLEN V. JAFFE,

PLAINTIFF/APPELLANT

V.

VIRGINIA PHOTOTHERAPY, L.L.C.,

DEFENDANT/APPELLEE

ON PETITION FOR APPEAL FROM THE
CIRCUIT COURT OF HENRICO COUNTY
HONORABLE CATHERINE HAMMOND, JUDGE

PETITION FOR APPEAL

ALLEN V. JAFFE, PRO SE

3211 FOX CHASE DRIVE

MIDLOTHIAN, VIRGINIA 23112

PHONE: 804-744-2383

FAX: 804-744-2383

IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

RECORD NO. CL02001730-00

ALLEN V. JAFFE,

PLAINTIFF/APPELLANT

V.

VIRGINIA PHOTOTHERAPY, L.L.C.,

DEFENDANT/APPELLEE

PETITION FOR APPEAL

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF VIRGINIA:

ALLEN V. JAFFE, APPELLANT, PRO SE (PLAINTIFF, PRO SE, IN THE TRIAL COURT) IS AGGRIEVED BY A FINAL DECREE OF THE CIRCUIT COURT OF HENRICO COUNTY, ENTERED JANUARY 24, 2003, SUSTAINING A PLEA OF RES JUDICATA AND DISMISSING THIS MATTER.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN DISMISSING THE PLAINTIFF'S CLAIM ON THE GROUND THAT IT WAS RES JUDICATA BECAUSE:

1. THE PREVIOUS ACTIONS ASSERTED AS BARS, WHICH WERE TRIED BY THE SAME JUDGE WERE BASED ON PREJUDICE AND BIAS AND NOT ON THE MERITS OF THOSE CASES. THAT PREJUDICE AND BIAS AGAINST THE PLAINTIFF TAINTED THE RULINGS AND AFFECTED THE OUTCOMES OF THE HEARINGS AND RESULTED IN DISMISSALS SO THAT THE PLAINTIFF WAS DENIED A FAIR TRIAL AND A PROPER FINAL DECREE ON THE MERITS OF THOSE CASES; AND AS A CONSEQUENCE, THOSE IMPROPER AND TAINTED DISMISSALS TO WHICH HE OBJECTED, IN THE PREVIOUS CASES DID NOT CONSTITUTE FINAL AND FAIR JUDGEMENTS ON THE MERITS AND THEREFORE CANNOT BE USED TO SUPPORT A CLAIM OF RES JUDICATA.

2. THE DEFENSE OF RES JUDICATA HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT AN ISSUE WAS PREVIOUSLY RAISED AND DECIDED IN AN APPROPRIATE COURT IN A PRIOR CAUSE OF ACTION (FODI'S V. RUTHERFORD, 26 VA. APP. 466, 449, 495 S.E. 2D 503, 505 (1998)(WORRIE V. BOZE, 198 VA. 533, 538, 95 S.E. 2D 192, 197 (1956); COMMONWEALTH EX. REL. GRAY V. JOHNSON, 7 VA. APP. 614, 618, 376 S.E. 2D 787, 789 (1989). BUT NO SUCH BURDEN WAS MET.

3. THE DEFENSE OF RES JUDICATA MUST PROVE THE IDENTITY OF: (1) THE REMEDIES SOUGHT: (2) THE IDENTITY OF THE CAUSES OF ACTION; (3) THE IDENTITIES OF PARTIES; AND (4) THE IDENTITY OF THE

QUALITY OF THE PERSONS FOR OR AGAINST WHOM THE CLAIM IS MADE (HIGHSMITH V. COMMONWEALTH, 25 VA. APP. AT 440, 489 S.E. 2D AT 241) DEFENSE HAS FAILED TO MEET THAT BURDEN BECAUSE THERE IS NEITHER AN IDENTITY OF THE REMEDIES SOUGHT NOR AN IDENTITY OF THE CAUSES OF ACTION (WRIGHT, 232 VA. AT 222, 349 S.E. 2D AT 128), NOR AN IDENTITY OF THE QUALITY OF THE PERSONS FOR OR AGAINST WHOM THE CLAIM IS MADE.

4. IT IS WELL SETTLED THAT RES JUDICATA MAY NOT BE TAKEN ADVANTAGE OR BY DEMURRER WHERE THE PLEADING DEMURRED TO DOES NOT SHOW ON ITS FACE THE EXISTENCE OF THE MATTERS RELIED ON TO SUPPORT THE APPLICATION OF THE DOCTRINE (MARTIN V. MARTIN, 167 VA. 206, 211, 212, 188 S.E. 148, 150)(30 AM. JUR., JUDGMENTS, SEC. 264, P. 989; 50 C.J.S., JUDGEMENTS, SEC 824, PP. 393, 394, 395, AND CASES CITED). THIS IS SO BECAUSE A DEMURRER STANDS OR FALLS BY WHAT APPEARS ON THE FACT OF THE PLEADING AT WHICH IT IS AIMED. AND SO RESORT CANNOT BE HAD TO ANOTHER PLEADING FOR THE PURPOSE OF SUPPORTING THE DEMURRER (6 MICHIE'S JURISPRUDENCE, VA. AND W. VA., DEMURRERS, SEC. 26, P. 24, AND CASES THERE CITED), AND YET VIRGINIA PHOTOTHERAPY, L.L.C., TOOK ADVANTAGE OF DEMURRER TO SUPPORT THE APPLICATION OF RES JUDICATA OVER PLAINTIFF'S OBJECTIONS.

5. THE FACT THAT THE PREVIOUS ACTIONS HAD BEEN TRIED IN THE SAME COURT BY THE SAME JUDGE DID NOT DISPENSE WITH THE NECESSITY OF PROOF OF THE RECORDS IN THE PREVIOUS ACTIONS. TO SUSTAIN A CLAIM OF RES JUDICATA THE COURT WILL NOT TAKE JUDICIAL NOTICE OF THE RECORD IN THE FIRST SUIT (30 AM. JUR., JUDGEMENTS, SEC. 273, P. 993; 50 C.J.S., JUDGEMENTS, SEC. 836, P. 404.) IT IS APPROPRIATE TO POINT OUT THAT ORDINARILY TO SUSTAIN THE ALLEGATION OF RES JUDICATA, THE WHOLE RECORD OF THE FORMER PROCEEDING MUST BE PUT IN EVIDENCE (SEE FREEMAN ON JUDGEMENTS, 5TH ED., SEC. 1030, PP. 2147, 2148; JONES' COMMENTARIES ON EVIDENCE, 2D ED., SEC. 1886, P. 3514; 30 AM. JUR., JUDGEMENTS, SEC. 274, P. 993; 50 C.J.S., JUDGEMENTS, SEC. 843-C. P. 417). GENERALLY, ONLY AN INSPECTION OF THE ENTIRE RECORD IN THE FIRST ACTIONS WILL DISCLOSE WHETHER THE IDENTICAL ISSUES IN CONTROVERSY IN THE PENDING SUIT WAS SETTLED IN THOSE PREVIOUS LITIGATIONS. IN THIS MATTER, NO RECORDS, EVIDENCE OR TESTIMONY WERE PRESENTED OR HEARD DURING THE MOTIONS HEARINGS THE ALLEGATION AND THEREFORE THE CLAIM OR RES JUDICATA COULD NOT AND SHOULD NOT HAVE BEEN SUSTAINED.

6. JUDGE HAMMOND, AFTER GRANTING PLAINTIFF'S MOTION TO DISQUALIFY FOR PREJUDICE AND SUBSEQUENTLY RECUSING HERSELF; OVER PLAINTIFF'S OBJECTIONS, SUSTAINED THE DEFENSE PLEA OF RES JUDICATA AND DISMISSED THE CASE AND OVER PLAINTIFF'S OBJECTIONS.

* * *

... AS A CONSEQUENCE IT WAS ERROR FOR JUDGE HAMMOND TO HAVE SUSTAINED THE PLEA OF RES JUDICATA AND DISMISSING THE MATTER AFTER RECUSING HERSELF.

CONCLUSION

FOR THE FOREGOING REASONS THE SPECIAL PLEA OF RES JUDICATA CANNOT BE SUSTAINED, AND THE DECISION BY THE CIRCUIT COURT AND SPECIFICALLY JUDGE HAMMOND, SUSTAINING SAID PLEA OF RES JUDICATA SHOULD NOT BE ALLOWED TO STAND.

THE PLAINTIFF PRAYS THAT THE DECREE OF THE CIRCUIT COURT BE REVERSED AND THE CASE REMANDED WITH DIRECTION THAT IT BE REINSTATED ON THE DOCKET OF THE ORIGINAL COURT FOR TRIAL ON ITS MERITS IF THE PARTIES BE SO ADVISED.

RESPECTFULLY SUBMITTED,

ALLEN V. JAFFE

/s/_____
PRO SE

ALLEN V. JAFFE

3211 FOX CHASE DRIVE

MIDLOTHIAN, VIRGINIA 23112

PHONE 804-744-2383 FAX 804-744-2383

* * *

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday *the* 25th *day of* June, 2003.

Allen V. Jaffe,

Appellant,

against

Record No. 030874
Circuit Court No. CL02-1730-00

Virginia Phototherapy, L.L.C.,

Appellee.

From the Circuit Court of Henrico County

[ENTERED: JUNE 25, 2003]

Upon review of the record in this case and consideration of the amended petition for appeal and the brief in opposition, the Court is of opinion the petition for appeal should be dismissed under Rule 5:11(c). In part, the appellee states in the brief in opposition, "[T]he arguments being asserted as error in the Petition for Appeal were not raised below." Therefore, a transcript or written statement of facts is necessary to determine whether the appellant stated objections with reasonable certainty at the time of the ruling as required by Rule 5:25.

On May 22, 2003, the appellee filed a motion to dismiss the petition for appeal in this Court. Because the Court dismisses the petition for appeal under Rule 5:11(c), the motion to dismiss is moot.

On May 28, 2003, the appellant filed a motion to exclude the appellee's brief in opposition. On further consideration whereof, the Court denies the motion.

Furthermore, the record indicates that the circuit court entered an order, dated January 24, 2003, dismissing the case with prejudice. The appellant filed a notice of appeal in the circuit court on February 7, 2003, and a petition for appeal in this Court on April 21, 2003. Therefore, the appeal was docketed in this Court, and the circuit court was without jurisdiction to enter the order dated April 29, 2003. See Code § 8.01-428(B).

For the reasons stated above, the petition for appeal is dismissed.

A Copy,

Teste:

David B. Beach, Clerk

By:

/s/
Deputy Clerk

IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

RECORD NO. 030874

ALLEN V. JAFFE

PLAINTIFF/APPELLANT

V.

VIRGINIA PHOTOTHERAPY, L.L.C.

DEFENDANT,APPELLEE

PETITION FOR REHEARING

ALLEN V. JAGGE, PRO SE

3211 FOX CHASE DRIVE

MIDLOTHIAN, VIRGINIA 23112

PHONE: 804-744-2383

PRO SE

* * *

... AND THE FACT THAT SHE PRESIDED AFTER RECUSAL SERVES AS GROUNDS FOR APPEAL BECAUSE THE ALLOWANCE OF SUCH A JUDGMENT WOULD CLEARLY VIOLATE THE APPELLANT'S RIGHT TO EQUAL PROTECTION AND A FAIR HEARING BY A NEUTRAL AND DETACHED JUDGE UNDER THE 14TH AMMENDMENT.

WITH REGARD TO THE CLAIM THAT THE OTHER OBJECTIONS COULD NOT BE SUBSTANCTIATED BECAUSE OF THE LACK OF TRANSCRIPTS OR A WRITTEN STATEMENT OF FACTS, THE APPELLANT SHOULD NOT BE MADE TO SUFFER FOR THE FAULTS OF THE COURT...

* * *

... CONTRARY TO THIS COURT'S OPINION THAT THE CIRCUIT COURT WAS WITHOUT JURISDICTION TO ENTER THE ORDER TO CORRECT NUNC RO TUNC DATED APRIL 29, 2003, THE APPELLANT DISAGREES AND STATES THAT SUCH AN ORDER TO CORRECT NUN PRO TUNC WAS WELL WITHIN THE CIRCUIT COURT'S POWERS IN ORDER TO CORRECT THE FRAUDULENT AND ERRONEOUS ORDER WHICH WAS SUBMITTED TO THE COURT BY THE DEFENDANT/APPELLEE COUNSEL AS OFFICERS OF THE COURT.

THE VERBAL ORDER ISSUED BY JUDGE HAMMOND SPECIFICALLY DISQUALIFIED HERSELF FROM THE MATTERS OF CL02-1729 AND CL02-1730 UPON PLAINTIFF'S WRITTEN MOTION TO DISQUALIFY FOR PREJUDICE AND BIAS. THE ORDER AS PREPARED BY THE DEFENSE COUNSEL INTENTIONALLY OMMITTED THE RECUSAL ORDER WHICH WAS CONSIDERED CENTRAL TO THIS APPELLANT'S APPEAL(MARKED APPELLANT'S #2).

* * *

... TO FURTHER SUPPORT THE ALLEGATION THAT THE FRAUDULENT ORDER WAS ABSOLUTELY INTENTIONAL, THE DEFENSE COUNSEL HAVING BEEN APPRISED OF THE INCORRECT ORDER WHICH THEY SUBMITTED, INSTEAD OF AGREEING TO THE MISTAKES AND APPOLIGIZING, AND AGREEING TO THE CORRECTIONS, THEY OBJECTED UNDER THE 21 DAY PROVISION OF RULE 1:1, UPON WHICH THE JUDGE OVERRULED THEM. EVEN TO THE END THE DEFENSE COUNSEL CONSPIRED TO DEFRAUD THE PLAINTIFF/APPELLANT OF HIS RIGHT TO A FAIR TRIAL AND APPEAL UNDER THE 14TH AMMENDMENT. AT ANY RATE THE JUDGE GRANTED THE MOTION TO CORRECT THE ORDER NUNC PRO TUNC TO INCLUDE HER ORDER OF RECUSAL ON JANUARY 24, 2003(MARKED APPELLANT'S EXHIBIT #3). THE JUDGE FINALLY SIGNED THE ORDER TO CORRECT NUNC PRO TUNC ON APRIL 29, 2003.

THE JUDGE WAS WITHIN HER JURISDICTION TO CORRECT THE FRAUDULENTLY PREPARED AND ERRONEOUS ORDER, NUNC PRO TUNC, TO JANUARY 24, 2003, THE DATE WHEN THE ORDER WAS ORIGINALLY ISSUE; ...

* * *

CONCLUSION

THIS PRO SE APPELLANT MAINTAINS THAT THE DISMISSAL ORDER WAS WRONG AND DEPRIVES THIS APPELLANT THE RIGHTS AND PROTECTIONS GUARANTEED UNDER THE 14TH AMMENDMENT AND THEREFORE SUCH DISMISSAL WAS WRONG AND UNCONSTITUTIONAL, FOR ALL THE REASONS PREVIOUSLY PRESENTED IN HIS BRIEFS, AND DOES NOT INTEND BY FOCUSING ON THESE ISSUES TO LIMIT OR ABANDON ANY OF THOSE CONTENTIONS. APPELLANT ALLEN V. JAFFE ASKS THAT THIS COURT REVERSE ITS JUDGEMENT, OR MODIFY ITS DECISION TO CORRECT OR ADDRESS THESE POINTS TO FACILITATE THE REVIEW OF THIS CASE BY THE SUPREME COURT OF THE UNITED STATES UNDER WRIT OF CERTIORARI.

RESPECTFULLY SUBMITTED,

ALLEN V. JAFFE

/s/_____
PRO SE

ALLEN V. JAFFE
3211 FOX CHASE DRIVE
MIDLOTHIAN, VIRGINIA 23112
PHONE 804-744-2383

* * *

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 12th *day of* September, 2003.

Allen V. Jaffe,

Appellant,

against

Record No. 030874
Circuit Court No. CL02-1730-00

Virginia Phototherapy, L.L.C.,
Appellee.

[ENTERED: SEPTEMBER 12, 2003]

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 25th day of June, 2003 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

/s/ _____
Clerk

No. 03-

In The
SUPREME COURT OF THE UNITED STATES

ALLEN V. JAFFE,

Petitioner,

v.

VRIGINIA PHOTOTHERAPY, L.L.C.,

Respondent.

ON PETITION FOR A WRIT OF CENTIORARI TO THE SUPREME COURT OF VIRGINIA, CITY OF RICHMOND

PETITION FOR A WRIT OF CERTIORARI

ALLEN V. JAFFE, *pro se*
3211 Fox Chase Drive
Midlothian, VA 23112
(804) 744-8381

QUESTIONS PRESENTED

1. This court should grant certiorari to clear up confusion as to whether during a motions hearing the courts must consider whether the party asserting Res Judicata must present evidence to prove by a preponderance that the issues asserted as bars were previously raised so as to assure fair and impartial hearing guaranteed under the 14th amendment.

2. This court should grant certiorari and decide whether on plea of Res Judicata, the courts must consider whether a lower court judge in a current action may simply take judicial notice of the record in previous actions and dispense with the necessity of proof of record of those previous actions in which that same judge presided, in determining the outcome of the current matter before.

3. This court should grant certiorari to decide whether the court must consider whether the dismissal of a matter for lack of jurisdiction under the Virginia Medical Malpractice Act may serve as a bar under Res Judicata to future actions.

4. This court should grant certiorari and decide the most fundamental issue of fairness and impartiality guaranteed under the 14th with regard to whether a lower court judge on motion to disqualify for bias and prejudice, does in fact disqualify and recuse themselves from those matters to which recusal had been sought then, should that judge be able to affect the determinations of those matters from which they are then barred.

5. This court should grant certiorari and decide whether on a petition for appeal, a higher court should consider an appellant's submitted statement of facts, in lieu of transcripts, when all the requirements necessary for admission of that statement of facts have been satisfied, but for the lower court judge's refusal to sign, or amend and sign such statement for admission when such a refusal serves to defeat the appellant's right of appeal.

6. This court should grant certiorari and decide whether in denying an appeal, the court should have considered an order correcting Nunc Pro Tunc, a previous fraudulent order, as being Nunc Pro Tunc to the *date of the original final order so as not to affect an appellant's right of appeal* with regard to *the determination of appellate jurisdiction and filing time requirements.*

* * *

5. A lower court judge upon recusal pursuant to a motion to disqualify for bias and prejudice may not be able to affect the determinations of those actions from which disqualification and recusal have been granted.

As a general matter, the courts have almost uniformly held that a trial judge who has recused herself "should take no other action in the case except the necessary ministerial acts to have the case transferred to another judge." *El Fendix de Puerto Rico v. The M/Y Johanny*, 36 F.3d 136 at 141 (1st Cir. 1994). 13 a Charles A. Wright, Arthur R. Miller & Edward H.

Cooper, Federal Practice and Procedure § 3550, at 629 (2d 1984); *see also Moody v. Simmons*, 858 F.2d 137, 143 (3d Cir. 1988); *Arnold v. Eastern Airlines, Inc.*, 712 f.2d 899, 904 (4th Cir. 1983); *In Re Cement Antitrust Litigation*, 673 F.2d 1020, 1025 (9th Cir. 1982); *Rohrbach v. AT&T Nassau Metals Corp.*, 915 F. Supp. 712, & N.5 (M.D. Pa. 1996); *Whitehead v. Neveda Commission on Judicial Procedure*, 920 P.2d 491, 502-03 (Nev. 1996).

Surely it would be improper for a judge to decide the issues of a case in which he or she had recused themselves if this decision viciated the litigant's constitutional right to be heard by a neutral and detached judge or it undermined the publics confidence in the impartiality of the judicial process. *See Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 858 N.7 & 861, 108 S. Ct. 2194, 2201 N.7. 100 L. Ed. 2d 855 (1988) (noting that a judge is called upon to take the steps necessary to maintain public confidence in the impartiality of the judiciary); *Ward v. Monroeville*, 409 U.S. 57, 62, 93 S. Ct. 80, 84, 34 L. Ed. 2d 267 (1972) (stating that due process guarantees litigants a neutral and detached judge.)

As a consequence it was error for the judge to have affected the outcome of this matter under appeal by sustaining the plea of Res Judicata and dismissing the action. In light of the foregoing, the appellant was denied his right to equal protection and a fair trial.

6. On a petition for appeal from a circuit court motions hearing, absent a transcript, the appellate court should consider an appellant's statement of facts when all the requirement for

admission have been satisfied, but for the judge's refusal to sign or amend and sign the statement for admission.

The admission of the statement of facts is necessary to an accurate and complete history of the proceedings in the trial court and the appellant should not be made to suffer for the faults of the court.

* * *

7. A lower court has no jurisdiction to issue final orders in a matter once that matter has been noticed foe appeal; except that an incorrect or fraudulent order may be corrected at any time by a motion and order to correct nunc pro tunc to the original date of the corrected order.

The judge while prohibited from issuing any final orders related to a matter noticed for appeal, was within her jurisdiction to correct Nunc Pro Tunc, the fraudulently prepared and erroneous order submitted by the defendant's counsel by order Nunc Pro Tunc to the date when the order was originally issued and signed.

* * *

The Supreme Court of Virginia improperly rejected the relevance of equal protection principles in denying legitimacy of the appellant's motion and order to correct Nunc Pro Tunc and in so doing served to defeat his right of appeal.

CONCLUSION

For the reasons set forth above, the Petition for a Writ of Certiorari should be granted. And this matter returned to the lower court for trial on the merits of the cause.

Respectfully submitted,

ALLEN V. JAFFE, *pro se*
3211 Fox Chase Drive
Midlothian, VA 23112
(804) 744-8381

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-8011

February 23, 2004

Mr. John R. Walk
Hirschler Fleischer
P.O. Box 500
Richmond, VA 23218-0500

Re: Allen V. Jaffe
v. Virginia Phototherapy, L.L.C.
No. 03-868

Dear Mr. Walk:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

/s/ William K. Suter
William K. Suter, Clerk

COMMONWEALTH OF VIRGINIA
FOURTEENTH JUDICIAL CIRCUIT

George F. Tidey
Judge
L.A. Harris, Jr.
Judge
Catherine C. Hammond
Judge
Gary A. Hicks
Judge

Government Complex
4301 E. Parham Road
Richmond, VA 23273-7032

Telephone: (804) 501-5834
Fascimile: (804) 501-5505

CIRCUIT COURT OF HENRICO COUNTY

17 September 2003

Allen V. Jaffe
301 Fox Chase Drive
Midlothian, VA 23112
Plaintiff

John R. Walk
Hirschler Fleischer
701 East Byrd Street
P.O. Box 500
Richmond, VA 23218
Counsel for Defendant

Re: Jaffe v. Landess
Civil Case No. CL02-1729

Dear Mr. Jaffe and Mr. Walk:

This matter comes before the Court pursuant to Ronald Mark Landess', DPM ("Landess") Special Plea and Motion for Sanctions as well as Allen V. Jaffe's ("Jaffe") Motion to Disallow Defendant's Discovery Requests and Motion for a Protective Order. Following the hearing on August 22, 2003, the Court permitted the parties an opportunity to submit written memoranda, which has been received.

Upon consideration of the arguments of the parties, a review of the record, and the memoranda of the parties, the Court does hereby grant the Special Plea of Landess. Res judicata precludes parties from litigating a claim for which a court has already entered a final judgment on the merits. State Water Control Board v. Smithfield Foods, Inc., 261 Va. 209, 214 (2001). In order to prove res judicata, a party must "establish identity of the remedies sought, identity of the cause of action, identity of the parties, and identity of the qualify of the persons for or against whom the claim is made." Id. (quoting Balbir Brar Assoc. v. Consolidated Trading and Servs. Corp., 252 Va. 341 (1996). The Court finds that all of the prongs for res judicata have been met and, therefore, the action is barred.

Moreover, the Court does deny the Motion for Sanctions by Landess.

In light of the foregoing rulings, the Court does not need to address the merits of Jaffe's Motion to Disallow Defendant's Discovery Requests and Motion for a Protective Order.

Mr. Walk is to prepare an Order consistent with the rulings of the Court and forward the same to Mr. Jaffe as that either or both parties may note their exceptions or objections. Mr. Walk is to have the Order returned to the Court on or before: Thursday, October 22, 2003.

Thanking you, I am

Very truly yours,

/s/ Gary A. Hicks
Gary A. Hicks
Judge

VIRGINIA:

IN THE CIRCUIT COURT OF HENRICO COUNTY

ALLEN V. JAFFE,

Plaintiff,

v. Case No. CL02-1729

RONALD MARK LANDESS, DPM,

Defendant.

[ENTERED: OCTOBER 20, 2003]

FINAL ORDER

On August 22, 2003, came plaintiff Allen V. Jaffe, *pro se,* and defendant Ronald M. Landess, by counsel, on the Special Plea, Motion for Sanctions, and Motion to Compel and for Sanctions filed by defendant Ronald M. Landess and on the Motion to Disallow Defendant's Request for Admissions and Motion for Protective Order of plaintiff Allen V. Jaffe, all of which were duly noticed for hearing;

It appearing from a review of a certified copy of the Court's file introduced into evidence in this proceeding that plaintiff Allen V. Jaffe has previously filed an action styled Jaffe v. Virginia PhotoTherapv. LLC, No. CL01-1543, that such action was dismissed with prejudice by Order dated April 9, 2002, and that Jaffe failed to appeal such decision; and

It appearing from a review of a certified copy of the Court's file introduced into evidence in this proceeding that plaintiff Allen V. Jaffe has previously filed an action styled Jaffe v. Virginia PhotoTherapv. LLC, No. CH01-1438, that such action was dismissed with prejudice by Order dated March 8, 2002, and that Jaffe failed to appeal such decision; and

It appearing from a review of a certified copy of the Court's file introduced into evidence in this proceeding that plaintiff Allen V. Jaffe has previously filed an action styled Jaffe v. Virginia PhotoTherapy, LLC. No. CL01-2094, that such action was dismissed with prejudice by Order dated August 8, 2002, and that Jaffe failed to appeal such decision; and

It appearing from a review of a certified copy of the Court's file introduced into evidence in this proceeding that plaintiff Allen V. Jaffe has previously filed an action styled Jaffe v. Virginia PhotoTherapv, LLC, No. CL02-1730; that such action was dismissed with prejudice by Order dated January 24, 2003 an the basis that the claims and causes of action asserted therein were barred by the doctrine of res judicata by virtue of the final adjudications referred to above; that Jaffe attempted to appeal such decision to the Virginia Supreme Court; and that by Order dated June 25, 2003, the Virginia Supreme Court denied his Petition for Appeal and by Order dated September 12, 2003 denied his Petition for Rehearing; and

In connection with this ruling, the Court receives into evidence the certified copy of the Virginia Supreme Court's September 12, 2003 Order denying

Jaffe's Petition for Rehearing and dismissing his appeal of No. CL02-1730; and

It appearing to the Court that all of the above referenced actions arose from the same hair removal treatments provided by Virginia PhotoTherapy, LLC which form the basis of the subject action; and

It appearing to the Court from the Stipulation of the parties introduced into evidence in this proceeding and the exhibits thereto that at all times relevant to this action defendant Ronald M. Landess has been the sole member and manager of Virginia PhotoTherapy, LLC; and

It appearing to the Court from a review of the allegations of the Complaint herein that each of the claims and causes of action asserted against defendant Ronald M. Landess have been previously asserted against Virginia PhotoTherapy, LLC, in one or more of the above-referenced actions; and

It appearing to the Court based upon all of the foregoing that defendant Ronald M. Landess is in privity with Virginia PhotoTherapy, LLC for purposes of the Court's consideration of the defendant's Special Plea of res judicata herein; and

It appearing to the Court that each of the elements of res judicata has been proven by defendant Ronald M. Landess;

Upon consideration of the foregoing findings and the authorities cited by defendant in memoranda in support of his Special Plea, and for the reasons stated in the Court's opinion letter dated September 17, 2003, it is hereby ORDERED that the defendant's Special Plea be sustained and that this action be DISMISSED WITH PREJUDICE; and that

Defendant's Motion to Compel and for Sanctions pursuant to Rule 4:12(c) and Motion for Sanctions pursuant to Virginia Code § 8.01-271.1 be DENIED; and that

Plaintiffs Motion to Disallow Defendant's Request for Admissions and Motion for Protective Order be DENIED.

There being no further motions or matters requiring consideration by the Court, this matter shall be placed by the Clerk among the ended cases.

ENTER: 10/20/03

/s/
Judge

I Ask For This As to Ruling on Special Plea; Objected to As to Denial of Motion to Compel and for Sanctions and Motion for Sanctions:

/s/ John R. Walk
John R. Walk (VSB No. 19697)
HIRSCHLER FLEISCHER
701 East Byrd Street (23219)
Post Office Box 500
Richmond, Virginia 23218-0500
Phone: (804) 771-9519
Fax: (804) 644-0957

Counsel for Ronald M. Landess, DPM

I Ask For This As to Denial of Motion to Compel and for Sanctions and Motion for Sanctions; Objected to As to Ruling on Special Plea, Motion to Disallow Defendant's Request for Admissions and Motion for Protective Order:

_____
Allen V. Jaffe, *pro se*
3211 Fox Chase Drive
Midlothian, Virginia 23112

VIRGINIA:

IN THE CIRCUIT COURT OF HENRICO COUNTY

ALLEN V. JAFFE,
Plaintiff,

v. Case No. CL02-1729

RONALD MARK LANDESS, DPM,
Defendant.

[ENTERED: NOVEMBER 10, 2003]

ORDER IMPOSING SANCTIONS

This day came defendant Ronald M. Landess, by counsel, and moved for sanctions against plaintiff Allen V. Jaffe;

As set forth more fully in the Court's Final Order dated October 20, 2003, prior to filing this action, Jaffe had filed four (4) previous actions against Virginia PhotoTherapy, LLC, all arising from the same hair removal treatments which form the basis of this action and all of which had been adjudicated adverse to Jaffe. The Court finds that Jaffe lacked a good faith basis for bringing this action;

In addition, simultaneously with filing this action, Jaffe filed another case against Virginia PhotoTherapy, LLC, No. CL02-1730. This action had been dismissed by this Court by Order dated January 24, 2003 and Jaffe's Petition for Appeal had been

rejected by the Virginia Supreme Court by Order dated June 25, 2003. The Court finds that Jaffe lacked a good faith basis for continued prosecution of this case after entry of the foregoing Orders;

In response to the filing of this action, Landess filed a Special Plea asserting the defense of *res judicata* and on August 8. 2003, filed his Memorandum in Support of Special Plea in which he set forth authorities which compel the conclusion that this matter was barred by *res judicata.* Jaffe failed at the hearing of this matter to present any contrary authority or to distinguish the authorities cited by Landess and, after being given leave to file a post-hearing memorandum, failed in either of his post-hearing memoranda to cite any contrary authority or to distinguish the authorities cited by Landess. The Court finds that Jaffe lacked any good faith basis for his continued prosecution of this matter after receipt of the Memorandum in Support of Special Plea;

In connection with the preparation for hearing of this matter, Landess propounded a Request for Admissions to Jaffe which sought merely his admission as to the authenticity of pleadings and Orders entered in his prior actions against Virginia PhotoTherapy, LLC. Jaffe refused to admit the authenticity of these documents without any good faith basis for doing so. This caused substantial inconvenience to the Clerk of this Court and the Clerk of the Virginia Supreme Court and expense to Landess in preparing and producing certified copies of these Court records at the hearing of this matter;

The Court issued its opinion by letter dated September 17, 2003 in which it sustained Landess' Special Plea of *res judicata* and instructed the parties to submit a sketch Order in accordance with the Court's rulings. Counsel for Landess timely prepared a sketch Order and submitted same to Jaffe for comment and/or endorsement. Jaffe failed and refused to endorse the Order or to offer any comments to it, necessitating the scheduling of a hearing for presentation of the sketch Order. Notwithstanding that the hearing was duly noticed for October 20, 2003, Jaffe failed to appear. The Court finds that Jaffe lacked any good faith basis for refusing to endorse the sketch Order or for failing to appear at the hearing which was necessitated by his failure to endorse the sketch Order;

After entry of the Final Order at the hearing noticed for that purpose on October 20, 2003 at which Jaffe failed to appear, Jaffe filed a Motion to Vacate said Order. In this Motion to Vacate, Jaffe does not raise any new matter; rather he merely reasserts arguments previously considered and rejected by this Court. Jaffe initiated the hearing for November 10, 2003 and noticed counsel for Landess to be present whereupon counsel for Landess brought on the Motion for Sanctions. The Court finds that Jaffe lacked any good faith basis for filing the Motion to Vacate or bringing it on for hearing;

Upon the basis of the foregoing findings, the Court amends its Final Order dated October 20, 2003 to delete its denial of Landess' Motion for Sanctions and Motion to Compel and for Sanctions and hereby awards sanctions pursuant to Virginia Code § 8.01-

271.1 and Rule 4:12(c) against plaintiff Allen V. Jaffe in the amount of $350.00 plus court reporter fees. Judgment shall be entered in favor of defendant Ronald M. Landess in such amount including judgment interest from the date of this Order until payment is made. Jaffe's Motion to Vacate said Final Order is denied. In all other respects, the Final Order entered on October 20, 2003 is affirmed and shall be the final judgment of this Court.

ENTER: November 10, 2003

/s/ _____
JUDGE

~~I Ask For This:~~ Objected to as to Amount.

/s/ John R. Walk
John R. Walk (VSB No. 19697)
HIRSCHLER FLEISCHER
701 East Byrd Street (23219)
Post Office Box 500
Richmond, Virginia 23218-0500
Phone: (804) 771-9519
Fax: (804) 644-0957

Seen and Objected to:

/s/ Allen V. Jaffe
Allen V. Jane, *pro se*
3211 Fox Chase Drive
Midlothian, Virginia 23112

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday *the* 9th *day of* June, 2004.

Allen v. Jaffe,

Appellant,

against

Record No. 040297
Circuit court No. CL02-1729

Ronald Mark Landess, DPM,

Appellee.

[ENTERED: JUNE 9, 2004]

From the Circuit Court of Henrico County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,
Teste:

Patricia H. Krueger, Clerk

By: /s/
Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 1st *day of* October, 2004.

Allen V. Jaffe,

Appellant,

against

Record No. 040297
Circuit Court No. CL02-1729

Ronald Mark Landess, DPM,

Appellee.

[ENTERED: OCTOBER 1, 2004]

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 9th day of June, 2004 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

/s/_____
Clerk